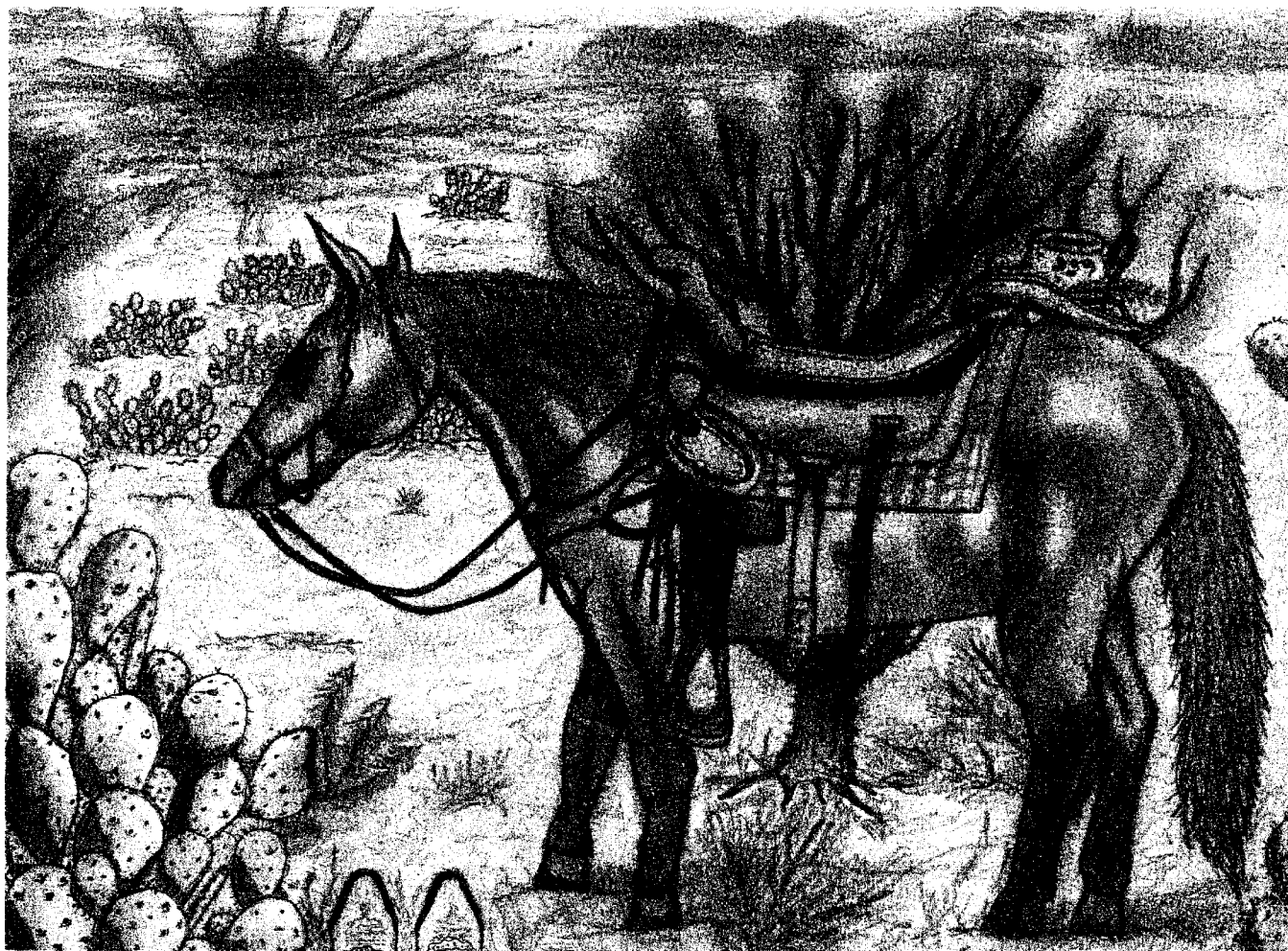

TEXAS REGISTER

Volume 34 Number 4

January 23, 2009

Pages 393 - 490



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
Office of the Secretary of State
P.O. Box 13824
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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0773-GA

Requestor:

The Honorable D. Matt Bingham
Smith County Criminal District Attorney
Smith County Courthouse
100 North Broadway, 4th Floor
Tyler, Texas 75702

Re: Whether the Open Meetings Act is applicable to a gathering in which a minority of a commissioners court meet informally with community leaders under particular circumstances (RQ-0773-GA)

Briefs requested by February 4, 2009

RQ-0774-GA

Requestor:

The Honorable Jeff Wentworth
Chair, Committee on Jurisprudence
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Authority of local taxing units or central appraisal districts to collect assessments for public improvement districts (RQ-0774-GA)

Briefs requested by February 6, 2009

RQ-0775-GA

Requestor:

Dr. David L. Lakey
Commissioner
Texas Department of State Health Services
Post Office Box 149347
Austin, Texas 78714

Re: Authority of the Department of State Health Services to enforce state asbestos regulations against municipalities (RQ-0775-GA)

Briefs requested by February 9, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200900166
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 13, 2009

◆ ◆ ◆

Opinions

Opinion No. GA-0688

The Honorable Jeff Wentworth
Chair, Committee on Jurisprudence
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether the police chief of an independent school district may simultaneously serve as a member of a city council of a city that is located within the geographical boundaries of the school district (RQ-0724-GA)

S U M M A R Y

The common-law doctrine of incompatibility does not bar an individual from simultaneously serving as the chief of police of an independent school district and as a city council member of a city located within the geographical limits of the school district.

Opinion No. GA-0689

Mr. Robert Scott
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Whether section 11.051(a-1), Education Code, alters the common-law standard for determining the number of votes necessary for a school district board of trustees to act in its official capacity (RQ-0725-GA)

S U M M A R Y

Section 11.051(a-1), Texas Education Code, does not alter the common-law standard for determining the number of votes necessary for a school district board of trustees to act in its official capacity.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200900165

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 13, 2009



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1060, §354.1062

The Texas Health and Human Services Commission (HHSC) proposes new §354.1060, concerning Definitions, and amendments to §354.1062, concerning Authorized Physician Services of Title 1, Part 15, Chapter 354, Subchapter A, Division 5, relating to Physician and Physician Assistant Services.

Background and Justification

HHSC proposes new §354.1060 to define "direct supervision," "personal supervision," and "substitute physician" as those terms relate to physician supervision of other physicians in the context of an accredited graduate medical education (GME) program and arrangements under which one physician substitutes for another physician (e.g., in a locum tenens arrangement). The purpose of the proposed new §354.1060 and amended §354.1062 is to clarify when a supervising physician may bill Medicaid for services provided by resident physicians in the context of a GME program and substitute physicians.

Section-by-Section Summary

Section 354.1060 sets out definitions for "direct supervision," "personal supervision," and "substitute physician."

Amended §354.1062(a) adds an opening statement specifying the conditions under which a physician may bill Texas Medicaid for covered services. Such conditions include compliance with this rule as well as compliance with all applicable federal and state laws, rules, regulations, and policies relating to the services provided.

In §354.1062(b), the description of physician services was amended to add a statement that a physician may not bill for supervised services if the bill would result in a duplicate claim. The statement that "the physician must have examined the patient, made a diagnosis, and established a plan of care, and documented these tasks on the appropriate medical records" was deleted; these requirements are addressed in the Medical Practice Act and the rules of the Texas Medical Board. The

definition for "personal supervision" was deleted and moved to new §354.1060(2).

New §354.1062(c) describes the circumstances in which a physician may bill for services as a supervising physician in a GME program. This new subsection adds situations in which the definitions for personal and direct supervision in §354.1060 are applied, such as inpatient and outpatient settings. Section 354.1062(c) also provides the associated documentation requirements. New text clarifies situations in which personal supervision is required, such as during the key portions of all major surgeries and the key portions of all other physician services billed to the Medicaid program if the immediate supervision, participation, or intervention of the supervising physician is medically prudent. New text is added, as permitted by Medicare, to allow personal and direct supervision of concurrent cases in the outpatient setting with residents providing evaluation and management services. The new text also allows personal and direct supervision of concurrent anesthesia cases by a supervising surgeon or anesthesiologist.

Other text is added to clarify that in the outpatient setting a face-to-face encounter between the patient and the physician providing direct supervision is not required. This is the usual practice for GME programs in Texas and is similar to Medicare's primary care exception policy for services furnished by residents in the absence of a teaching physician. Text is added to require a face-to-face encounter by the supervising physician when evaluation and management services are provided in the inpatient setting.

Amended §354.1062(d) permits an attending physician to bill for delegated health care tasks performed by a qualified physician's assistant or advanced practice nurse. In this subsection, the phrase "in a nursing facility" is deleted because this delegation may occur in any setting.

Amended §354.1062(e) permits billing for services provided by a physician assistant or advanced practice nurse, but deletes the reference to an "anesthesiologist assistant" because this provider type is not licensed in Texas.

New §354.1062(f) clarifies when a physician may bill for services performed by a substitute physician. This new subsection adds references to reciprocal and locum tenens arrangements; reduces the maximum number of days for these arrangements from 90 to 60 days to coincide with Medicare; and makes it clear that the substitute physician must be licensed in the state of Texas and cannot be on the Medicaid or Title XX provider exclusion list. The amended rule also contains an exception to the 60-day limit to coincide with a recent change to the Social Security Act to allow an exception for physicians ordered to active duty in the U.S. Armed Forces (42 U.S.C. §1395u(b)(6)(D)(iii)).

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed section and amendments are in effect there will be no fiscal impact to state government. The proposed new section and amendments will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the new or amended requirements, as they will not be required to alter their business practices as a result of the rules. One of the rule changes is not reflected in existing policies; this change is to reduce the maximum number of days for a substitute physician arrangement from 90 days to 60 days. This change is not expected to have an adverse economic impact because most Medicaid-enrolled physicians are required to enroll in Medicare and the Medicare limit is 60 days.

There are no anticipated economic costs to persons who are required to comply with the proposed section or amendments. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed section and amendments are in effect, the public will benefit from the adoption of the proposal. The anticipated public benefit of enforcing the proposed section and amendments will be improved access to and quality of health care services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code. Under §2007.003(b) of the Texas Government Code, HHSC has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding these rules.

Public Comment

Written comments on the proposed section and amendments may be submitted to Garry Walsh, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 13247, H390, Austin, Texas 78711; by fax to (512) 249-3731; or by e-mail to garry.walsh@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for Tuesday, February 17, 2009 at 9:00 a.m. to 11:00 a.m. in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Pamela Dunn at (512) 491-1488.

Statutory Authority

The new section and amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new section and amendments affect the Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1060. Definitions.

The following words and terms shall have the following meaning when used in this division unless the context clearly indicates otherwise.

(1) Direct supervision--The supervising physician must be in the same office, building, or facility when and where the service is provided and must be immediately available to furnish assistance and direction.

(2) Personal supervision--The supervising physician must be physically present in the room when and where the service is being provided.

(3) Substitute physician--A physician who provides services in place of another physician under either a reciprocal or locum tenens arrangement. These arrangements must comply with Medicaid policy, billing, reporting, and documentation requirements.

(A) Reciprocal arrangements--Arrangements of a substitute physician covering for the billing physician on an occasional basis when the billing physician is unavailable to provide services, and limited to a continuous period of coverage that is no longer than 60 days. Reciprocal arrangements do not have to be in writing.

(B) Locum tenens arrangements--Arrangements of a substitute physician assuming the practice of a billing physician for a temporary period of no longer than 60 days when the billing physician is absent for reasons such as illness, pregnancy, vacation, continuing medical education, or active duty in the U.S. Armed Forces. When the reason is due to active duty in the Armed Forces, the temporary period may extend over a longer continuous period during all of which the billing physician has been called or ordered to active duty as a member of a reserve component of the Armed Forces. Locum tenens arrangements must be in writing.

§354.1062. Authorized Physician Services.

(a) This rule specifies the conditions under which a physician may bill Texas Medicaid for covered services. Such conditions include compliance with this rule as well as compliance with all applicable federal and state laws, rules, regulations and policies relating to covered services.

(b) [(+)] Physician services. A physician may bill for [The term "physician services" includes those] reasonable and medically necessary services that are provided by the physician or under the [personal] supervision of the [a] physician and that are within the scope of practice of medicine or osteopathy as defined by state law. A physician

shall not bill the Texas Medicaid program for supervised services if that billing would result in duplicate payment for the same services. [Unless otherwise specified in writing by the department or its designee, or except for services specified in subsection (e) of this section, the physician must have examined the patient, made a diagnosis, and established a plan of care, and documented these tasks on the appropriate medical records of the patient before submitting claims for payment to the department or its designee. If such documentation is not present in the appropriate medical record, then any payment may be recouped. Except as specified in subsections (b), (c), (d), or (e) of this section, the term "personal supervision" means that the physician must be in the building of the office or facility at the time, when, and where the service is provided.]

(c) Physician supervising other physicians. A physician supervising other physicians may bill when the supervision and services are performed in the context of an accredited graduate medical education program. Facilities and professional practices do not qualify for reimbursement for services provided by resident physicians in an outpatient setting unless the facility or professional practice is owned by, or affiliated with, an accredited graduate medical education program.

(1) For all services billed to the Medicaid program, the supervision must be medically appropriate, as described in this rule, and provided to a resident physician performing a Medicaid-covered service. The supervision must be either personal or direct. To qualify for reimbursement, the medical record must clearly establish:

(A) the nature of the supervisory role of the billing physician in the delivery of the services provided by the resident physician; and

(B) that the supervision complies with the definition of supervision applicable to the covered service, as defined in §354.1060 of this title (relating to Definitions).

(2) Personal supervision is required during the key portions of all major surgeries and the key portions of all other physician services billed to the Medicaid program if the immediate supervision, participation, or intervention of the supervising physician is medically prudent in order to assure the health and safety of the patient. Physician services that require personal supervision may include invasive procedures and evaluation and management services that require complex medical decision making. Situations that require personal supervision include those in which:

(A) The clinical condition of the patient is unstable or will likely become unstable during, or as a result of, the planned medical intervention; or

(B) The planned medical intervention, even under optimal conditions, will result in medically reasonable risk for significant morbidity or death following the service or procedure; or

(C) Deviation from expected technique at the time the procedure or service is performed presents a medically reasonable, causally-related, foreseeable risk to the patient's life or health.

(3) For surgical services, the supervising surgeon is responsible for pre-operative, operative, and post-operative care provided to the patient and billed to the Medicaid program. The supervising surgeon, however, may delegate the pre- and post-operative care to a resident if appropriate direct supervision, as defined in §354.1060 of this title, is provided.

(4) For all services that do not require personal supervision and are billed to the Medicaid program, the supervising physician must provide direct supervision. The supervising physician may not provide

direct supervision for an activity at the same time as providing personal supervision for another activity, with the following exceptions.

(A) The supervising physician in the outpatient setting may provide personal and direct supervision concurrently for residents providing evaluation and management services; and

(B) A supervising surgeon or supervising anesthesiologist may be involved in two concurrent anesthesia cases with residents. The supervising surgeon or supervising anesthesiologist must be present during all key portions of the procedure if the immediate supervision, participation, or intervention of the supervising physician is medically prudent in order to assure the health and safety of the patient.

(5) Supervision in the outpatient setting. A face-to-face encounter between the physician providing direct supervision and the patient is not required in the outpatient setting in the context of a graduate medical education program. All other requirements for personal or direct supervision in this division must be met for the services to qualify for reimbursement. The supervising physician must document that he/she:

(A) Reviewed the patient's history and physical examination;

(B) Confirmed or revised the patient's diagnosis;

(C) Determined the course of treatment to be followed;

(D) Assured that any needed supervision of interns or residents was provided; and

(E) Confirmed that the documentation in the medical record comports with the level of service billed.

(6) Supervision in the inpatient setting. A physician who supervises other physicians in an inpatient setting must comply with documentation requirements of paragraph (5)(A) - (E) of this subsection and must document that he or she has completed a:

(A) Personal examination of the patient not later than 36 hours after the patient's admission and before the patient's discharge and, as necessary, based on the patient's condition; and

(B) Face-to-face encounter with the patient on the same day as any billed services provided by the resident physician.

[(b) If the attending physician provides personal and identifiable direction to interns or residents who are participating in the care of his patient in a teaching setting as an approved and accredited training program by the appropriate accreditation agencies, the physician's services are covered. For major surgical procedures and other complex and dangerous procedures or situations, the attending physician must be physically present during the procedure or situation to provide personal and identifiable direction; or payment may be recouped. If personal and identifiable direction is not provided or is not appropriately documented, any payment for services may be recouped. The attending physician must demonstrate that personal and identifiable direction was provided by:]

[(1) reviewing the patient's history and physical examination and personally examining the patient within a reasonable period after the patient's admission and before the patient's discharge;]

[(2) confirming or revising the patient's diagnosis;]

[(3) determining the course of treatment to be followed;]

[(4) ensuring that any supervision needed by the interns or residents is provided; and]

[(5) making, in the patient's medical record, appropriate documentation of the tasks identified in paragraphs (1)-(4) of this sub-

section before submitting the claim for payment to the department or its designee. The documentation is made in the same manner as required by federal regulations under Medicare.]

(d) [(e)] Delegated services. If the attending physician delegates health care tasks to a qualified physician's assistant or advanced practice nurse [in a nursing facility], the services are covered if the supervision or delegation is consistent with the rules and regulations of the Texas Medical Board [Texas State Board of Medical Examiners]. Services provided by physician's assistants and advanced practice nurses [in nursing facilities] must be consistent with applicable rules, regulations, and laws. If the supervision of the delegated task is not appropriately documented in the patient's chart, any payment for services may be recouped.

[(d)] A physician may bill for the service of a substitute physician who sees patients in the billing physician's practice under either an informal arrangement of less than 14 days, or under a formal arrangement of up to 90 days (or as otherwise specified by the department). The substituting physician's name and address must be documented on the claim.]

(e) Services provided by a physician assistant or advanced practice nurse. If the services are provided by a physician assistant or [.] advanced practice nurse [or anesthesiologist assistant], practicing within the scope of their license and based on protocols which have been agreed to and signed by their supervising licensed physician, the physician services are covered.

(f) Substitute physician. A physician may bill for the services of a substitute physician who sees patients in the billing physician's practice under either a reciprocal or locum tenens arrangement. To qualify for reimbursement, the billing physician and substitute physician must comply with the following requirements:

(1) The substitute physician's name and address must be documented on the claim.

(2) The substitute physician must be licensed to practice in the state of Texas.

(3) Consistent with the requirements of §371.1615 and §371.1677 of this title (relating to Provider Responsibility and Obligation of All Health Care Providers Regarding Exclusion, respectively), the substitute physician must not be on the Medicaid or Title XX provider exclusion list.

(4) The time period for which a physician may bill for the services of a substitute physician is limited to the following situations:

(A) When the billing physician is absent or unavailable for reasons other than active duty as a member of a reserve component of the U.S. Armed Forces, services provided by a substitute physician after the 60th day must be provided by and billed under the substitute physician's own Medicaid provider number.

(B) When the billing physician is absent or unavailable due to active duty as a member of a reserve component of the U.S. Armed Forces, the billing physician may bill for the services of a substitute physician for a period of 60 days or a longer continuous period during all of which the billing physician has been called or ordered to active duty as a member of a reserve component of the Armed Forces. Medicaid may reimburse the billing physician for services provided by the substitute physician until the billing physician is no longer on active duty as a member of a reserve component of the Armed Forces.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2009.

TRD-200900108

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 22, 2009

For further information, please call: (512) 424-6900



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.71

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.71, concerning Receipt of Commissions and Other Compensation.

The amendment to §501.71 will add language that permits CPAs to provide an estimate of the amount of the CPAs commission for services or products recommended or sold by him when the exact amount is unknown.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better understanding of the CPAs required disclosure of commissions and other compensations.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because

the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on February 23, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.71. Receipt of Commissions and Other Compensation.

(a) A person shall not for a commission recommend or refer to a client any product or service or refer any product or service to be supplied to a client, or receive a commission, when the person also performs services for that client requiring independence under §501.70 of this chapter (relating to Independence).

(b) This prohibition applies during the period in which the person is engaged to perform any of the services requiring independence and during the period covered by any of the historical financial statements involved in such services requiring independence.

(c) A person who receives or agrees to receive, pays or agrees to pay~~;~~ other compensation with respect to services or products recommended, referred, or sold by him shall, no later than the making of such recommendation, referral, or sale, disclose ~~[make the following disclosures]~~ in writing~~;~~

~~[(1)]~~ ~~[if a client,]~~ the nature, source, and amount, or an estimate of the amount when the amount is not known, of all such other compensation~~;~~ ~~or~~

~~[(2)]~~ ~~if not a client, the nature and source of any such other compensation.~~

(d) The disclosure shall be made regardless of the amount of other compensation involved.

(e) This section does not apply to payments received from the sale of all, or a material part, of an accounting practice, or to retirement payments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900077

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: February 22, 2009

For further information, please call: (512) 305-7842



CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.3, concerning Violation of a Cease and Desist Order.

The amendment to §518.3 will provide language in our rules to seek an injunction in court to expedite our efforts to stop the unlawful activity by those who violate cease and desist orders.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be expediting the enforcement of the Act by allowing the option of an injunction for the protection of the public.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on February 23, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§518.3. Violation of a Cease and Desist Order.

(a) Whenever the board, through its Executive Director, determines that a person subject to a cease and desist order issued by the board has violated that order, the board, through its Executive Director, after notice and an opportunity for a hearing, may assess an administrative penalty, after consulting with the board's presiding officer, against the person in violation in accordance with the guidelines contained in §518.4 of this title (relating to Administrative Penalty Guidelines for Violations of Cease and Desist Orders) and Subchapter L of the Texas Public Accountancy Act, as amended.

(b) The board staff acting through the Executive Director will offer the person found in violation of a cease and desist order an agreed consent order.

(1) The agreed consent order will act as the preliminary report as required by §901.553 of the Act, including findings of fact to support the administrative penalty as well as the amount of the penalty to be imposed.

(2) Board staff will advise the person found in violation of a cease and desist order that he has 20 days to either sign the agreed consent order or to request a hearing in writing, as required by §901.554 of the Act.

(3) If the person found to be in violation of a cease and desist order signs the agreed consent order, then the agreed consent order will be presented to the board for its consideration. If the board ratifies the agreed consent order, then it will issue a board order.

(c) If the board, through its Executive Director, determines that a person subject to a cease and desist order issued by the board has violated that order, the board, through its Executive Director and after consulting with the board's presiding officer, may seek to enjoin the person in violation in state district court.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900078

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: February 22, 2009

For further information, please call: (512) 305-7842

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER G. SPECIAL APPRAISAL

34 TAC §9.2005

The Comptroller of Public Accounts proposes to amend §9.2005, concerning wildlife use requirement. Subsection (f)(2) is amended to correct the year from 2002, which was intended to be 2009.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing more consistent administration by county appraisal district personnel, of the stands and requirements that must be met to convert qualified agricultural land to a wildlife management use that qualifies the land for wildlife management appraisal. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528 or by email at buddy.breivogel@cpa.state.tx.us.

The amendment is proposed under Tax Code, §23.252, which requires the Texas Parks and Wildlife Department to develop, and the comptroller to adopt, rules governing the qualification of agricultural land used for wildlife management.

The amendment implements Tax Code, Chapter 23, Subchapter D, Special Appraisal.

§9.2005. Wildlife Use Requirement.

(a) - (e) (No change.)

(f) The wildlife management use requirements made by this section do not apply to a tract of land if:

(1) beginning with the tax year that began on January 1, 2002, the tract of land has continuously and without interruption qualified for agricultural appraisal based on wildlife management use; and

(2) the size of the tract of land, when measured in acres, is equal to or greater than, the size of the tract on January 1, 2009 [2002].

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2009.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER V. ENFORCEMENT DIVISION 3. REMEDIES IN MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2146

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.2146, concerning termination of provider agreement on the basis of the imposition of enforcement actions three times within an accountability period, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The purpose of the amendment is to update DADS rules to be consistent with Senate Bill (SB) 1318, 80th Legislature, 2007, which amended Texas Human Resources Code, §32.021(m), to require adoption of criteria under which DADS may waive the requirement to terminate a nursing facility's provider agreement when three Category II or Category III remedies have been imposed within a 24-month accountability period. The Centers for Medicare and Medicaid Services (CMS) imposes Medicaid remedies on dually certified facilities while DADS imposes Medicaid remedies on facilities that are Medicaid-certified only. DADS developed the waiver criteria to assist in achieving reasonable consistency in the remedies applied by DADS and CMS.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.2146 states the criteria DADS will use to determine whether it may waive termination of a nursing facility provider agreement. The proposal also updates state agency names to ensure that the rule reflects changes resulting from the consolidation of health and human services agencies in 2004.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because it does not place any new requirements on a nursing facility.

PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendments is that DADS will have greater flexibility in evaluating a facility to continue a provider agreement. In addition, when DADS chooses to continue a contract under the criteria, an individual residing in a facility will not have to relocate to another facility.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Geri Willems at (512) 438-3159 in DADS' Provider Services Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-020, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 020" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021(m), which requires the adoption of rules establishing criteria under which DADS may waive termination of a provider agreement.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021(m) and §161.021.

§19.2146. Termination of Provider Agreement on the Basis of the Imposition of Enforcement Actions Three Times Within an Accountability Period.

(a) If DADS [When the Provider Enrollment Section of the Texas Department of Human Services (DHS)] determines that DADS or CMS [DHS or the Health Care Financing Administration] has imposed a required Category II or III remedy [remedies] (as defined in 42 Code of Federal Regulations (CFR) [designated on the chart in 59 Federal Register, 56183]) on a facility three times within an accountability period, a recommendation is made to terminate the facility's provider agreement, unless DADS waives termination after considering the factors described in subsection (e) of this section [DHS makes an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility].

(b) DADS [DHS] notifies a facility [the facilities] in writing of its intention to terminate the facility's provider agreement. Notification occurs within:

(1) three calendar days after [from] receipt of the recommendation of remedies for a facility [facilities] found in immediate jeopardy; or

(2) 15 calendar days after [from] receipt of the recommendation of remedies for a facility [facilities] not found in immediate jeopardy.

(c) The provider agreement is terminated on the 20th calendar day after the facility receives notice of DADS' [DHS's] decision to terminate the provider agreement.

(d) An [The] appeal for this remedy is the appeal on the issue of noncompliance that led to the imposition of a Category II or III remedy [enforcement actions] for the third time within the accountability period. The appeal [Appeals] for this remedy follows [follow] the federal procedures in 42 CFR Part [Code of Federal Regulations (CFR)] 498 for a dually-participating facility [facilities] or in 42 CFR Part 431 for a facility that is Medicaid-certified only [Medicaid-only facilities].

(e) DADS may waive termination of a facility's provider agreement when a facility has received a Category II or III remedy three times within an accountability period of 24 consecutive months. DADS may consider one or more of the following to waive termination of a facility's provider agreement:

(1) the history of violations committed by the facility resulting in three Category II or III remedies within an accountability period and the resulting enforcement action compared with the history of violations committed by other facilities that received Category II or III remedies three times within an accountability period and the resulting enforcement action;

(2) the history of ownership of the facility when the Category II or III remedies were imposed; or

(3) the efforts the facility has made to correct the violations that resulted in the imposition of the Category II or III remedies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2009.
TRD-200900084

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 22, 2009

For further information, please call: (512) 438-3734

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**CHAPTER 49. CONTRACTING FOR
COMMUNITY CARE SERVICES
SUBCHAPTER D. BILLINGS AND PAYMENT
40 TAC §49.43**

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §49.43, concerning the expedited payments system (EPS), in Chapter 49, Contracting for Community Care Services.

BACKGROUND AND PURPOSE

The EPS was implemented in the early 1980's to expedite claims for eligible providers delivering personal assistance services. At that time, providers had to wait for up to 21 days to receive reimbursement after submitting a paper request for claims payment. Using the EPS reduced the amount of time for reimbursement by allowing a provider to receive a substantial portion of payment at the beginning of the month after services were provided.

Since the implementation of the Claims Management System (CMS) in 1999, DADS has made several improvements to claims submittal available to providers. For example, providers can now: (1) submit multiple claims per month instead of submitting only one claim per month; (2) create templates to expedite data entry and avoid duplicate data entry; (3) monitor and re-submit claims denied for payment immediately; and (4) submit unlimited supplemental claims per month. Due to these improvements, providers are able to receive payment more expediently, generally within five to seven days of a claim submittal. In addition, the Texas Medicaid and Healthcare Partnership claims systems currently processes provider claims in a timely fashion, eliminating the need for the EPS.

Thus, DADS proposes to repeal the rule containing EPS requirements.

SECTION-BY-SECTION SUMMARY

The repeal of §49.43 deletes the requirements governing the EPS, including provider eligibility requirements, participation requirements, and billing options.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the CMS is more efficient and is capable of paying a claim after five to seven days after submittal, so the EPS is obsolete and unnecessary.

PUBLIC BENEFIT AND COSTS

Gordon Taylor, DADS Chief Financial Officer, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is that DADS rule base will reflect current program policy concerning provider reimbursement.

Mr. Taylor anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Larry North at (512) 438-3922 in DADS' Claims Management Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-028, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) post-marked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by

midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 028" in the subject line.

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§49.43. Expedited Payments System.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900085

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 22, 2009

For further information, please call: (512) 438-3734

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.5

Proposed amended §810.5, published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5223), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 6, 2009.

TRD-200900035

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.161

The Texas Department of Agriculture (the department) adopts an amendment to §19.161 concerning expansion of the quarantined area for the Diaprepes root weevil, *Diaprepes abbreviatus* (L), without changes to the proposal published in the December 5, 2008, issue of the *Texas Register* (33 TexReg 9837). An observant grove care manager alerted the Texas A&M University Kingsville Citrus Center scientists about declining citrus trees in a 3-acre grapefruit grove near Bayview, Texas. During September 30, 2008 - October 1, 2008, the scientists discovered seven larvae and four adults of the Diaprepes root weevil during examination of the citrus trees at this grove. In addition, one Diaprepes root weevil adult was discovered on October 2, in a trap deployed in the adjoining 4-acre grapefruit grove. Since detection of the Diaprepes root weevil in 2001 at McAllen, Texas, the department has established a quarantine surrounding the detection to prevent spread of this pest to other areas of Texas and facilitate eradication. The Bayview detection is approximately 46 miles from the initial detection at McAllen and the origin of the former infestation remains unknown. The amendment prevents further spread of the Diaprepes root weevil and facilitates its eradication. The amendment to §19.161 expands the quarantined area in correspondence with the detection of the Diaprepes root weevils near Bayview.

No comments were received on the proposal.

The amendment to §19.161 is adopted under the Texas Agriculture Code, §71.002, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines the pest is dangerous and is not widely distributed in this state; and §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2009.

TRD-200900065

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: January 27, 2009

Proposal publication date: December 5, 2008

For further information, please call: (512) 463-4075

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) adopts amendments to §20.1 concerning definitions for cotton pest control and to §20.22 concerning stalk destruction requirements and deadlines, without changes to the proposal published in the December 5, 2008, issue of the *Texas Register* (33 TexReg 9838). The amendments are adopted to delete two terms no longer in use, define one new term, update definitions of certain terms, modify the destruction requirements for Pest Management Zone 10, and clarify the destruction requirements for all pest management zones. Also, due to the addition of new subparts to subsection (a) of §20.22, the reference to the graphic in subsection (a) has changed.

Amendments to §20.1 are adopted to delete obsolete terms and clarify definitions. The term "cotton destruction date" is changed to "destruction deadline". The definitions of "destroyed, or destruction", "regrowth cotton" and "volunteer cotton" are changed and the definition of "standing stalks" is deleted.

The amendments to §20.22 are adopted in response to a request from the Cotton Producer Advisory Committee of Pest Management Zone 10 and to improve clarity. The adopted amendments promote suppression of pink bollworm populations in Pest Management Zone 10 by making flood irrigation acceptable as an alternative to plowing in that zone, as part of the process for cotton stalk destruction. Research conducted by entomologists Beasley, C. A., and C. J. Adams for Texas A&M University (The Southwestern Entomologist 20: 73-106, 1995) supports the efficacy of flood irrigation in suppression of pink bollworm. Pest Management Zone 10 will retain the existing requirement for shredding of the cotton to make it non-hostable and the requirement of keeping the field non-hostable, regardless of whether the field is plowed or flood irrigated. The destruction requirements for other pest management zones are unchanged by the adopted changes, although the wording of their requirements has been changed for improved clarity.

No comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1

The amendments to §20.1 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

The code affected by the adoption is the Texas Agriculture Code, Chapter 74.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2009.

TRD-200900026

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: January 25, 2009

Proposal publication date: December 5, 2008

For further information, please call: (512) 463-4075



SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The amendments to §20.22 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2009.

TRD-200900025

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: January 25, 2009

Proposal publication date: December 5, 2008

For further information, please call: (512) 463-4075



CHAPTER 29. ECONOMIC DEVELOPMENT SUBCHAPTER B. GO TEXAN RURAL COMMUNITY PROGRAM RULES

4 TAC §29.21

The Texas Department of Agriculture (the department) adopts amendments to Title 4, Part 1, Chapter 29, Subchapter B, §29.21, concerning the department's GO TEXAN Rural Com-

munity Program, without changes to the proposal published in the December 5, 2008, issue of the *Texas Register* (33 TexReg 9839).

The amendment to §29.21 is adopted to modify the definition of a "non-metropolitan county" to achieve necessary program goals of economic development in rural Texas. The definition of "non-metropolitan county" is changed to include counties located in a U.S. Census Bureau designated metropolitan statistical area with a county population of less than 50,000. The change will provide more rural Texas communities with an effective tool to market and promote themselves as a desirable rural community or travel destinations, resulting in economic activity in more rural Texas communities due to the name recognition of the GO TEXAN certification mark.

No comments were received on the proposal.

The amendment to §29.21 is adopted under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.027, which authorizes the department to establish and maintain an economic development program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 9, 2009.

TRD-200900098

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: January 29, 2009

Proposal publication date: December 5, 2008

For further information, please call: (512) 463-4075



PART 7. TEXAS AGRICULTURE RESOURCES PROTECTION AUTHORITY

CHAPTER 101. GENERAL RULES

SUBCHAPTER A. ROUTINE PROCEDURES

4 TAC §§101.1 - 101.3, 101.20

The Texas Department of Agriculture (the department) adopts the repeal of Chapter 101, Subchapter A, §§101.1 - 101.3 and §101.20, concerning Routine Procedures for the Agriculture Resources Protection Authority (Authority), without changes to the proposal published in the October 31, 2008, of the *Texas Register* (33 TexReg 8855). The repeal of these sections is proposed because the Authority was abolished by law by the Texas Legislature during the 79th Legislative Session (2005), and the sections were, in effect, voided and no longer effective upon abolishment of the Authority.

No comments were received on the proposal.

The repeal of §§101.1 - 101.3 and §101.20 is adopted under Texas Agriculture Code, §12.016, which authorizes the department to adopt rules as necessary to administer its duties under the Texas Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2009.

TRD-200900109

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Texas Agriculture Resources Protection Authority

Effective date: February 1, 2009

Proposal publication date: October 31, 2008

For further information, please call: (512) 463-4075

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 35. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.10

The Texas Department of Housing and Community Affairs (Department) adopts the repeal of Chapter 35, §§35.1 - 35.10, concerning the Multifamily Housing Revenue Bonds Rules, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7854) and will not be republished.

The repeal is adopted in order to promulgate new sections addressing the adoption of new rules governing the Multifamily Housing Revenue Bond program.

Public hearings on the repeal were held in El Paso, Lubbock, Brownsville, Houston, Fort Worth, and Austin. Additionally, written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through October 20, 2008.

The Board approved the final order adopting this repeal on December 18, 2008.

The repealed sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code, Subchapters P through W, which authorize the Department to issue bonds and prescribes the Governing Board action required, establish bond terms, security for bonds, approval, registration and execution of bonds, rights and remedies of bondholders, obligations of the Department and the state, and other requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2009.

TRD-200900048

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: January 26, 2009

Proposal publication date: September 19, 2008

For further information, please call: (512) 475-3916

CHAPTER 35. 2009 MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.10

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 35, §§35.1 - 35.10, concerning the 2009 Multifamily Housing Revenue Bonds Rules. Sections 35.1, 35.3 and 35.6 - 35.8 are adopted with changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7854). Sections 35.2, 35.4 - 35.5 and 35.9 - 35.10 are adopted without change and will not be republished.

The new chapter implements changes that will improve the 2009 Private Activity Bond Program and implements changes that are consistent with other program rules.

Public hearings on the proposed rule were held in El Paso, Lubbock, Brownsville, Houston, Fort Worth, and Austin. Additionally, written comments on the proposed rule were accepted by mail, e-mail, and facsimile through October 20, 2008.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses were presented in the order in which the sections appear in the proposed Chapter 35, starting with comments concerning §35.3 and ending with §35.8. Following the section number is the title of the section as it appears in the rule. Each number corresponds to a person who commented on the particular rule section. The key relating each number to a particular commenter is listed below. Following the identification of the related commenter is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new chapter.

Public comments on the proposed amendments were received by: (26) Mark-Dana Corporation; (27) NRP Group; (32) Foundation Communities; (38) Avenue Community Development Corporation; (43) State Representative Lon Burnam; (54) Foundation Communities; (60) S2A Consulting; (62) Gonzalez Newell Bender, Inc. Architects; (66) S. Anderson Consulting.

§35.3(29). Definitions--Rural Development.

COMMENT (26): Comment was made requesting that Rural Bond transactions be allowed to exceed the 80 new unit construction limit, because the market demand should determine the number of units not an arbitrary number. Additionally, commenter requested that Rural Developments involving reconstruction not have a size limitation.

STAFF RESPONSE: §2306.004, Texas Government Code, specifically defines a Rural Development and imposes a maximum limit of 80 Units for Developments proposed in Rural Areas. The Department has applied this restriction consistently to all Department programs. Staff believes that allowing no more than 80 units as part of reconstruction is an appropriate application of the statute. No change was recommended.

§35.6(d)(16). Pre-Application Threshold Requirement.

COMMENT (26, 66): Comment was made requesting that the evidence of proof of delivery be expanded because a recipient may refuse to sign a receipt for mail or courier delivery, in which case a returned receipt that had been properly addressed but

not signed should be allowed as proof of delivery. Commenter also suggested that this requirement would be difficult to meet in order to receive confirmation from the recipients. Commenter indicated that municipalities who oppose a deal could pose a problem by simply not signing or providing evidence of proof of delivery.

STAFF RESPONSE: Staff believes that a returned receipt, although not signed, would be acceptable evidence as long as the delivering agent (courier, postal service, etc) indicates that delivery was attempted and refused. Staff notes that the requirements of the QAP have not changed; only the clarification for what satisfies "proof of delivery". The Department does not require the Applicant to submit such evidence unless the notification process is challenged. The Department must have a mechanism that shows the notification was delivered to the intended recipient. No change was recommended.

§35.6(d)(17). Pre-Application Threshold Requirements.

COMMENT (62): Commenter asks the Department to be more specific in its definition of "lighting fixtures." Commenter went on to question whether an option is available to either provide Energy Star light fixtures, or simply provide tenants with Energy Star bulbs. It is their contention that the energy star light fixtures will be obsolete soon.

STAFF RESPONSE: Staff agrees that this requirement should be revised and recommended the following language:

(H) Energy-Star or equivalently rated lighting in all Units, which may include compact florescent bulbs.

§35.6(e)(5)(QQ). Pre-Application Scoring Criteria.

STAFF RECOMMENDATION: Staff recommended that the Energy Star or equivalently rated kitchen appliances scoring item be deleted in this section since it is captured in §35.6(d)(16) of the threshold criteria.

COMMENT (27, 32, 38, 43, 54, 60, 66): Comment was made supporting the green building initiatives. Commenter stated that NAHB have guidelines which will be forwarded to the Department. Comments were made asking to improve the point allocations for green building, to award points proportionally according to the impact of particular green practices and equipment would have on the project overall, and to clarify language to ensure more performance-based and not prescriptive goals to again meet overall green building goals. Comment was made suggesting that more points are awarded to larger photovoltaic panels, as opposed to smaller ones. Commenter also suggested excluding the cost of solar insulations from the project cost so that developers are not deterred from including such systems in their projects. Comment was made asking the Department to consider scoring rehabilitation projects with 1.5 points per Green Building item achieved, because rehabilitation projects have less flexibility. Comment was made suggesting "the addition of tank-less hot water heaters for 3 points" to the Green Building criteria.

STAFF RESPONSE: Staff agrees with the clarifications received concerning green building initiatives. These comments appear to be substantial, however, staff believes these clarifications will enable the development community to understand what is required and will enable the Department to inspect and/or monitor the amenities. Staff agrees that reconfiguration of existing Developments to include green building initiatives does require additional consideration. The Department allows this same consideration with other amenities. Staff agrees with the 1.5 point consideration. Staff made the following revisions:

(QQ) Green Building amenities: (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities):

(i) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);

(ii) passive solar heating/cooling (3 points maximum):

(I) Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west;

(II) One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east;

(iii) water conserving features (2 points maximum, 1 point for each):

(I) Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush;

(II) Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets;

(iv) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);

(v) irrigation and landscaping (must implement both of the following) (2 points):

(I) collected water (at least 50%) for irrigation purposes;

(II) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter;

(vi) sub-metered utility meters (2 points maximum):

(I) Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or

(II) Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point);

(vii) energy efficiency (4 points maximum):

(I) Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006; or

(II) Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85;

(viii) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);

(ix) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);

(I) Photovoltaic panels that total 10 kW (1 point);

(II) Photovoltaic panels that total 20 kW (2 points);

(III) Photovoltaic panels that total 30 kW (3 points);

(x) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);

(xi) recycling service provided throughout the compliance period (1 point);

(xii) water permeable walkways (at least 20% of walkways and parking) (1 point);

(xiii) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points).

Staff believes that including tankless hot water heaters may be a reasonable request. However, it requires further research and input for staff to establish an appropriate recommendation for this year's QAP. Staff proposed that this suggestion be incorporated into the 2010 QAP and commits to further research this issue. The limited amount of research that staff has conducted to date indicates many possible disadvantages to the installation of such units; including, the limited amount of hot water that can be produced at one time; the longer period it may take to get hot water, since they don't start heating the water until you turn on the faucet; the possibility of an increase in water wastage since you have to let the water run longer to get your hot water; and the limited rate of heated water flow. Staff recommended no change.

Staff also added language to §35.6(e)(11)(E) for consistency with the QAP in that developments located within 100 feet of the fall line of the high voltage transmission power lines will have one point deducted.

§35.8(b) - (c). Fees.

STAFF RECOMMENDATION: Staff recommended changes to this section to clarify the bond and tax credit compliance fees. With the Board's approval, staff made the following changes:

(b) Application and Issuance Fees. At the time of full application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications \$10,000 or \$30/unit, whichever is greater, for the bond application fee.) At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to \$25/unit and a tax credit compliance fee equal to

\$40/unit. For refunding Applications the Application fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.

(c) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements. The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to \$40/unit beginning two years from the closing date on the bonds. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to \$25/unit beginning two years from the closing date on the bonds. Compliance fees may be adjusted from time to time by the Department. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid for a minimum of thirty (30) years or as long as the bonds are outstanding.

The Board approved the final order adopting the new sections, as amended, as well as administrative changes as needed for consistency within this chapter, on December 18, 2008.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code, Subchapters P through W, which authorize the Department to issue bonds and prescribe the Governing Board action required, establish bond terms, security for bonds, approval, registration and execution of bonds, rights and remedies of bondholders, obligations of the Department and the state, and other requirements.

§35.1. Introduction.

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2009 Private Activity Bond Program Year. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan and Rules ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in the chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

§35.3. Definitions.

The following words and terms, when used in the chapter, shall have the following meaning, unless context clearly indicates otherwise.

(1) Administrative Deficiency--As defined in §49.3(2) of this title.

(2) Applicant--As defined in §49.3(7) of this title.

(3) Application--As defined in §49.3(8) of this title.

(4) Board--The Governing Board of the Department.

(5) Bond--An evidence of indebtedness or other obligation, regardless of the sources of payment, issued by the Department under the Act, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable, or nonnegotiable, in bearer or registered form, in certified or book entry form, in temporary or permanent form, or with or without interest coupons.

(6) Code--The U.S. Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued by the United States Department of the Treasury or the Internal Revenue Service.

(7) Development--As defined in §49.3(32) of this title.

(8) Development Owner--As defined in §49.3(35) of this title.

(9) Eligible Tenants--

(A) individuals and families of Extremely Low, Very Low and Low Income;

(B) Families of Moderate Income (in each case in the foregoing subparagraph (A) and (B) of this paragraph as such terms are defined by the Issuer under the Act); and

(C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

(10) Extremely Low Income--The income received by an individual or family whose income does not exceed 30% of the area median income or applicable federal poverty line, as determined by the Act.

(11) Family of Moderate Income--A family:

(A) that is determined by the Board to require assistance taking into account:

(i) the amount of total income available for the housing needs of the individuals and family;

(ii) the size of the family;

(iii) the cost and condition of available housing facilities;

(iv) the ability of the individuals and family to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

(v) standards established for various federal programs determining eligibility based on income; and

(B) that does not qualify as a family of Low Income.

(12) Ineligible Building Type--As defined in §49.3(56) of this title.

(13) Institutional Buyer--

(A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or

(B) A qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144A).

(14) Intergenerational Housing--As defined in §49.3(57) of this title.

(15) Low Income--The income received by an individual or family whose income does not exceed 80% of the area median income or applicable federal poverty line, as determined by the Act.

(16) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of law, including this title, the Act and §42 of the Code.

(17) New Construction--As defined in §49.3(64) of this title.

(18) Owner--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(19) Persons with Special Needs--Persons who:

(A) Are considered to be disabled under a state or federal law;

(B) Are elderly, meaning 60 years of age or older or of an age specified by an applicable federal program;

(C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(D) Are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.

(20) Private Activity Bonds--Any Bonds described by §141(a) of the Code.

(21) Private Activity Bond Program Scoring Criteria--The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(e) of this title.

(22) Private Activity Bond Program Threshold Requirements--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(d) of this title.

(23) Program--The Department's Multifamily Housing Revenue Bond Program.

(24) Proper Site Control--Regarding the legal control of the land to be used for the Development, means the earnest money contract is in the name of the Applicant (principal or member of the General Partner); fully executed by all parties and escrowed by the title company.

(25) Property--The real estate and all improvements thereon, whether currently existing or proposed to be built thereon in connection with the Development, and including all items of personal property affixed or related thereto.

(26) Qualified 501(c)(3) Bonds--Any Bonds described by §145(a) of the Code.

(27) Rehabilitation--As defined in §49.3(81) of this title.

(28) Rural Area--An area that is located:

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or

(C) In an Area that is eligible for funding by Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000.

(29) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural new construction Developments with more than 80 units.

(30) Tenant Income Certification--A certification as to income and other matters executed by the household members of each tenant in the Development, in such form as reasonably may be required by the Department in satisfaction of the criteria prescribed by the Secretary of Housing and Urban Development under §8(f)(3) of the Housing Act of 1937 ("the Housing Act") (42 U.S.C. 1437f) for purposes of determining whether a family is a lower income family within the meaning of the §8(f)(1) of the Housing Act.

(31) Tenant Services--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §§601 et seq.), and other similar services.

(32) Tenant Services Program Plan--The plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

(33) Trustee--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

(34) TRDO-USDA--As defined in §49.3(94) of this title.

(35) Unit--As defined in §49.3(95) of this title.

(36) Very Low Income--The income received by an individual or family whose income does not exceed 60% of the area median income or applicable federal poverty line as determined under the Act.

§35.6. *Application Procedures, Evaluation and Approval.*

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (d) of this section. The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (c) of this section. After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's initial intent to issue Bonds (the "inducement resolution") with respect to the Development. After Board approval of the inducement resolution, the induced Applications will be submitted to the Texas Bond Review Board for its lottery, waiting list or carryforward processing in rank order. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department for participation in lottery. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest ranked Application as previously determined by the Department. The Texas Bond Review Board will issue reservations of allocation for Applications submitted for the waiting list or carryforward in the order provided by the Department based on rank. The criteria by which a Development may be deemed to be eligible or ineligible are explained in subsection (j) of this section, entitled Eligibility Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website.

(c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. The TDHCA Board reviews the Development as a whole for adherence to timelines and notification rules in the Qualified Allocation Plan and Rules, the need for the Development, compliance with local government rules and procedures, financial feasibility and the input of local and state officials and interested community members. These factors and others will be used to make the final determination at the appropriate time. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the Application is presented to the Board.

(d) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected by the Applicant in the Application. Prequalification Assumptions:

(A) Development Feasibility:

(i) Debt Coverage Ratio must be greater than or equal to 1.15;

(ii) Deferred Developer Fees are limited to 80% of Developer's Fees;

(iii) Contractor Fee, Overhead and General Requirements are limited to 14% of direct costs plus site work cost; and

(iv) Developer Fees cannot exceed 15% of the project's Total Eligible Basis.

(B) Construction Costs Per Unit Assumption. Costs not to exceed \$85 per square foot for general population developments and \$95 for elderly developments (Acquisition/Rehab developments are exempt from this requirement);

(C) Anticipated Interest Rate and Term. As stated in the Summary of Financing Participants in the pre-application;

(D) Size of Units (Acquisition/Rehab developments are exempt from this requirement):

(i) Efficiency Units must be at least 550 square feet;

(ii) One bedroom Unit must be greater than or equal to 650 square feet for family and 600 square feet for senior Units;

(iii) Two bedroom Unit must be greater than or equal to 900 square feet for family and 700 square feet for senior Units;

(iv) Three bedroom Unit must be greater than or equal to 1,000 square feet;

(v) Four bedroom Unit must be greater than or equal to 1,200 square feet.

(2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;

(3) Executed Site Control. Properly executed and escrow receipted site control through the inducement Board meeting at pre-application and ninety (90) days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting;

(4) Current Market Information (must support affordable rents);

(5) Completed current TDHCA Bond Pre-Application;

(6) Completed Multifamily Rental Worksheets;

(7) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information;

(8) Completed 2009 Bond Review Board Residential Rental Attachment;

(9) Signed letter of Responsibility for All Costs Incurred;

(10) Signed Mortgage Revenue Bond Program Certification Letter;

(11) Evidence of Paid Application Fees (\$1,000 to TDHCA, \$2,000 to Vinson and Elkins, as the Department's bond counsel, and \$5,000 to Bond Review Board);

(12) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property;

(13) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius;

(14) Utility Allowance documented from the Appropriate Local Housing Authority;

(15) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Secretary of State; and

(16) Required Notification. Evidence of notification is required in the form of the "Certification of Notifications" form provided in the pre-application stating that they made all the required notifications prior to the deadlines and a copy of the entire mailing list on the "Public Information Form" (including names and complete addresses) of all the recipients. Proof of delivery of the notification must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (F) of this paragraph, then the QAP and Rules will override the notification process listed in subparagraphs (A) - (F) of this paragraph):

(A) State Senator and Representative that represents the community containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under clause (i) of this subparagraph must be made by the deadlines described in that clause. Evidence of notification must meet the requirements identified in clause (ii) of this subparagraph to all of the individuals and entities identified in clause (iii) of this subparagraph.

(i) The Applicant must request Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(I) No later than fourteen (14) days prior to the date the Application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-Application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the

Development is located in an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request neighborhood organizations from that source in the same format;

(II) If no reply letter is received from the local elected officials by seven (7) days prior to the Application submission, then the Applicant must certify to that fact with the "Pre-Application Notification Certification Form" provided in the Pre-Application materials; and

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries contain the proposed Development Site or that the Applicant has knowledge of as of the Pre-Application Submission in the "Certification of Notification Form" provided in the Pre-Application.

(ii) No later than the date the Pre-Application is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt in the format required in the "Pre-Application Notification Template" provided in the Pre-Application materials. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials; however the county officials are required to be notified. Evidence of Notification is required in the form of a certification in the "Certification of Notification Form" provided in the Pre-Application materials. It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in subclauses (I) - (IX) of this clause in the event the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(I) Neighborhood Organizations on record with the state or county whose boundaries contain the proposed Development Site as identified in clause (i)(III) of this subparagraph;

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State representative of the district containing the Development; and

(IX) State senator of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing, or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate; and

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur.

(17) All New Construction or Reconstruction units must provide the amenities in subparagraphs (A) - (G) of this paragraph. Rehabilitation (excluding Reconstruction) must provide the amenities in subparagraphs (B) - (G) of this paragraph unless expressly identified as not required (§2306.187).

(A) All new construction units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Blinds or window coverings for all windows;

(C) Energy-Star or equivalently rated dishwasher and disposal (not required for TRDO-USDA Developments);

(D) Energy-Star or equivalently rated Refrigerator;

(E) Oven/Range;

(F) Exhaust/vent fans (vented to the outside) in bathrooms;

(G) Energy-Star or equivalently rated ceiling fans in living areas and bedrooms; and

(H) Energy-Star or equivalently rated lighting in all Units which may include compact fluorescent bulbs.

(e) Pre-Application Scoring Criteria.

(1) Income and rent levels of the tenants: Priority 1 applications will receive 10 points, Priority 2 applications will receive 7 points and Priority 3 applications will receive 5 points.

(2) Construction Cost Per Unit includes: direct hard costs, site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to \$85 per square foot for general population Developments and \$95 per square foot for elderly Developments (1 point) (Acquisition/Rehab will automatically receive (1 point)).

(3) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family

and must be greater than or equal to 750 square foot for elderly (5 points). (Acquisition/Rehab developments will automatically receive 5 points).

(4) Period of Guaranteed Affordability for Low Income Tenants. Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (1 point).

(5) Quality and Amenities Substitutions in amenities will be allowed as long as the overall score is not affected. Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows: Acquisition/Rehab developments will receive 1.5 points for each item.

- (A) Laundry Connections (2 points);
- (B) Self-cleaning or continuous cleaning ovens (1 point);
- (C) Microwave Ovens (in each Unit) (1 point);
- (D) Refrigerator with icemaker (1 point);
- (E) Laundry equipment (washer and dryers) for each individual Unit including a front load washer and dryer in required UFAS compliant Units (3 points);
- (F) Storage Room of approximately 9 square feet or greater (does not include bedroom, entryway or linen closets (does not have to be in the unit but must be on the property site) (1 point);
- (G) Covered entries (1 point);
- (H) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);
- (I) Covered patios or covered balconies (1 point);
- (J) Covered Parking (including garages) of at least one covered space per Unit (2 points);
- (K) High speed internet service to all Units at no cost to residents (2 points);
- (L) Fire sprinklers in all Units (2 points);
- (M) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco (3 points). Applicants may not select this item if subparagraph (N) of this paragraph is selected);
- (N) Greater than 75% Masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco (1 point). Applicants may not select this item if subparagraph (M) of this paragraph is selected);
- (O) Thirty year architectural shingle roofing (1 point);
- (P) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points);
- (Q) R-15 Walls/R-30 Ceilings (rating of wall system) (3 points);
- (R) 14 SEER HVAC or evaporative coolers in dry climates for new construction, adaptive reuse and reconstruction or radiant barrier in the attic for the rehabilitation (3 points);
- (S) One Children's Playscape Equipped for 5 to 12 years olds, or one Tot Lot (1 point);

- (T) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);
- (U) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (V) Enclosed sun porch or covered community porch/patio (2 points);
- (W) BBQ Grills and Tables (at least one each per 50 Units) (1 point);
- (X) Accessible walking path/jogging path separate from a sidewalk (1 point);
- (Y) Full Perimeter Fencing (2 points);
- (Z) Controlled access gate (1 point);
- (AA) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, and 1 printer for every 3 computers (with a minimum of one printer), and 1 fax machine (2 points);
- (BB) Furnished and staffed children's activity center (3 points);
- (CC) Horseshoe pit, putting green or shuffleboard court (1 point);
- (DD) Furnished Fitness Center equipped with a minimum of two of the following fitness equipment options with at least one per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, stationary weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);
- (EE) Library with an accessible sitting area (separate from the community room) (1 point);
- (FF) Gazebo with sitting area (1 point);
- (GG) Covered Pavilion that includes barbeque grills and tables (2 points);
- (HH) Swimming pool (3 points);
- (II) Community laundry room (with at least one front loading washer) (1 point);
- (JJ) Furnished Community room (1 point);
- (KK) Service coordinator office in addition to leasing offices (1 point);
- (LL) Senior Activity Room (Arts and Crafts, etc.) (2 points);
- (MM) Health Screening Room (1 point);
- (NN) Secured Entry (elevator buildings only) (1 point);
- (OO) Community Dining Room with full or warming kitchen (3 points);
- (PP) Community Theatre Room equipped with a 52 inch or larger screen with surround sound equipment, DVD player; and theatre seating (3 points);
- (QQ) Green Building amenities: (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities);

(i) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);

(ii) passive solar heating/cooling (3 points maximum):

(I) Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west;

(II) One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.

(iii) water conserving features (2 points maximum, 1 point for each):

(I) Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush;

(II) Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets;

(iv) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);

(v) irrigation and landscaping (must implement both of the following) (2 points):

(I) collected water (at least 50%) for irrigation purposes;

(II) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter;

(vi) sub-metered utility meters (2 points maximum):

(I) sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or

(II) sub-metered utility meters on new construction project (excluding new construction senior project) (1 point);

(vii) energy efficiency (4 points maximum);

(I) Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006; or

(II) Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by ei-

ther complying with the appropriate builder option package or a HERS score of 85;

(viii) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);

(ix) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum):

(I) Photovoltaic panels that total 10 kW (1 point);

(II) Photovoltaic panels that total 20 kW (2 points);

(III) Photovoltaic panels that total 30 kW (3 points);

(x) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);

(xi) recycling service provided throughout the compliance period (1 point);

(xii) water permeable walkways (at least 20% of walkways and parking) (1 point);

(xiii) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points).

(6) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included);

(A) \$10.00 per Unit per month (10 points);

(B) \$7.00 per Unit per month (5 points);

(C) \$4.00 per Unit per month (3 points).

(7) Zoning appropriate for the proposed use or no zoning required for the intended use must be in place at the time of the Application submission date, which is listed on the Department's website for Applications submitted for waiting list and carryforward, in order to receive points (5 points).

(8) Proper Site Control (as defined in §35.3(24) of this title). Site control must be through the scheduled Board meeting inducement and at full application must be ninety (90) days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting. For Applications submitted for waiting list and carryforward all information must be correct at the time of the Application submission date, listed on the Department's website in order to receive points (5 points).

(9) Development Support/Opposition. Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. The letter must specifically indicate support or opposition otherwise the letter will be considered neutral.

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

(10) Proximity to Community Services/Amenities Community services/amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services/amenities are located. (Acquisition/Rehab developments will receive 1.5 points for each item in subparagraphs (A) - (O) of this paragraph).

(A) Full service grocery store or supermarket (1 point);

(B) Pharmacy (1 point);

(C) Convenience store/mini-market (1 point);

(D) Retail Facilities (Target, Wal-Mart, Home Depot, Bookstores, etc.) (1 point);

(E) Bank/Financial Institution (1 point);

(F) Restaurant (1 point);

(G) Indoor public recreation facilities (community center, civic center, YMCA, museum) (1 point);

(H) Outdoor public recreation facilities (park, golf course, public swimming pool) (1 point);

(I) Fire/Police Station (1 point);

(J) Medical Facilities (hospitals, minor emergency, medical offices) (1 point);

(K) Public Library (1 point);

(L) Public Transportation (1/2 mile from site) (1 point);

(M) Public School (only one school required for point and only eligible with general population developments) (1 point);

(N) Dry Cleaners;

(O) Family Video Rental (i.e. Blockbuster, Hollywood Video, Movie Gallery) (1 point).

(11) Proximity to Negative Features adjacent to or within 300 feet of any part of the Development site boundaries. A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed in subparagraphs (A) - (F) of this paragraph within the stated area if that is correct. (maximum -6 points)

(A) Junkyards (1 point deducted);

(B) Active Railways (excluding light rail) (1 point deducted);

(C) Heavy industrial/manufacturing plants (1 point deducted);

(D) Solid Waste/Sanitary Landfills (1 point deducted);

(E) Within the "fall line" of High Voltage Transmission Power Lines (1 point deducted); and/or

(F) Accident zones or flight paths for commercial or military airports (1 point deducted).

(12) Acquisition/Rehabilitation Developments will receive 30 points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(13) Preservation Developments will receive 10 points. This includes rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past ten years. Evidence must be provided.

(14) Declared Disaster Areas. Applications will receive 7 points, if at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development site is located in an area declared to be a disaster under §418.014 of the Texas Government Code. This includes federal, state and Governor declared disaster areas.

(15) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive 6 points if the proposed Development is located in a census tract in which there are no other existing developments that were awarded housing tax credits in the last five (5) years and 3 points if there are no other existing developments that were awarded housing tax credits in the last three (3) years. The applicant must provide evidence of the census tract in which the Development is located. These census tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

(16) Notary Public Services for Tenants. Applications will receive 1 point for this item (§2306.6710(b)(3)). To receive this point, the Applicant must submit a certification that the Development will provide notary public services to the tenants at no cost to the tenant. This provision will be included in the Land Use Restriction Agreement and Regulatory Agreement.

(f) Multiple Site Applications. For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(g) Financing Commitments. After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(h) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the reservation date from the Texas Bond Review Board. The Volume III of the Application and such supporting material as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is

applying for other Department funding then refer to the Rules for that program for Application submission requirements. The final application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority, within thirty (30) days of the Department's receipt of Volumes I and II. The applicant must certify to the fact that the sign was installed within thirty (30) days of Volume I and II submission and the date, time and location of the TEFRA Public Hearing must be included on the sign at least thirty (30) days prior to the hearing date. The sign must be at least 4 feet by 8 feet in size and be located within 20 feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information and lettering on the sign must meet the minimum requirements identified in the Application. In areas where the Public Notification Sign is prohibited by local ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the 1,000 foot or local ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. The Applicant must mail notice to any public official that changed from the submission of the pre-application to the submission of the final application and any neighborhood organization that is known and was not notified at the time of the pre-application submission. No additional notification is required unless the Applicant submitted a change in the Application that reflects a total Unit increase greater than 10%, an increase greater than 10% for any given AMFI, a decrease in the number of market rate units, or a change in the population being served (elderly, general population or transitional);

(2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website;

(i) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the email within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted.

All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies within five business days will result in a penalty fee of \$500 for each day the deficiency remains unresolved. Any Application with unresolved deficiencies after the 10th day from the issuance of the deficiency notice will be terminated. The Applicant will be responsible for the payment of any fees accrued pursuant to this section regardless of any termination pursuant to this section. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid.

(j) Eligibility Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) - (6) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).

(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.

(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.

(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:

(A) barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or

(B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or

(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or

(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score as set out in the Department's Compliance Monitoring Policies and Procedures (Chapter 60 of this title); or

(E) otherwise disqualified or debarred from participation in any of the Department's programs.

(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.

(7) An application may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51% or more of the residential units are located:

(A) in a county with a population of less than 75,000; or

(B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites (§1372.002).

(k) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(l) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is an acquisition/rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

- (1) The developer market study;
- (2) The location;
- (3) The compliance history of the developer;
- (4) The financial feasibility;
- (5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;
- (6) The Development's proximity to other low income Developments;
- (7) The availability of adequate public facilities and services;
- (8) The anticipated impact on local school districts;
- (9) Zoning and other land use considerations;

(10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(11) Other good cause as determined by the Board.

(m) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. The Department's conduit housing transactions will be processed in accordance with 34 TAC, Part 9, Chapter 181, Subchapter A (the Texas Bond Review Board rules) and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

(n) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(o) Closing. If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20(g) of this title. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§35.7. *Regulatory and Land Use Restrictions.*

(a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. For Developments involving new construction, the term of the LURA will be the longer of thirty (30) years, the period of guaranteed affordability or the period for which Bonds are outstanding. For the financing of an existing Development, the term of the LURA will be the longer of the longest period which is economically feasible in accordance with the Act, or the period for which Bonds are outstanding.

(b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pur-

suant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner of the Development. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) Set Asides.

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:

(A) at least 20% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) at least 40% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant (Required federal set-aside requirements).

(d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed 140% of the area median income for a four-person household.

(e) Qualified 501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified 501(c)(3) Bonds are further subject to the restriction that at least 75% of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

(h) Tenant Services. The LURA will require that the Development Owner offer a variety of services for residents of the Development through a Tenant Services Program Plan which is subject to annual approval by the Department.

(i) Land Use Restriction Agreement. Requirements as defined in Chapter 60, Subchapter A of this title.

§35.8. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, the Department's Bond Counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB)). These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code).

(b) Application and Issuance Fees. At the time of full application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications \$10,000 or \$30/unit, whichever is greater, for the bond application fee.) At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to \$25/unit and a tax credit compliance fee equal to \$40/unit. For refunding Applications the Application fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.

(c) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements. The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to \$40/unit beginning two years from the closing date on the bonds. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to \$25/unit beginning two years from the closing date on the bonds for payment to be applied to the third year following closing; the asset management fee, if applicable, is paid in advance and is equal to \$25/unit beginning two years from the closing date on the bonds. Compliance fees may be adjusted from time to time by the Department. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years

from the closing date. These fees are paid for a minimum of thirty (30) years or as long as the bonds are outstanding.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2009.

TRD-200900049

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: January 26, 2009

Proposal publication date: September 19, 2008

For further information, please call: (512) 475-3916



CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §90.8

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §90.8, concerning the application form for a license to operate a migrant labor housing facility, without changes to the text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7951) and will not be republished.

The amendments are adopted (1) to change the assistance telephone number on the Application to Operate a Migrant Labor Facility and eliminate unnecessary language, (2) to add a form for requesting a License Renewal, and (3) to add the form that inspectors will use for conducting and documenting inspections.

The Board approved the final order adopting the amendments on December 18, 2008.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900069

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: January 28, 2009

Proposal publication date: September 19, 2008

For further information, please call: (512) 475-3916



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.55

The Texas State Board of Public Accountancy adopts an amendment to §501.55, concerning Definition of Acronyms, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9643) and will not be republished.

The section defines acronyms used throughout the Board's rules.

The amendment will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900070

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: January 28, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy adopts an amendment to §501.75, concerning Confidential Client Communications, without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8477) and will not be republished.

The section clarifies information which is confidential through the accountant-client privilege.

The amendment will eliminate the words "other compulsory process" following the term "court order" and add the language "signed by a judge" in order to make it clear that CPAs should only release client records to other parties without their client's consent when a judge orders its release.

The Board received one letter commenting on behalf the Texas State Securities Board expressing concern that the proposed revision could hinder investigations of violations of the Texas Securities Act, thus limiting their ability to protect investors, would substantially delay their investigations and the amendment would

create a process where a search warrant must be obtained, likely causing a disruption to the accounting firms who are willing to comply with the current process of complying with a subpoena. The Securities Board recommends adding language to allow state and federal law enforcement agencies or regulatory agencies to issue subpoenas.

The Public Accountancy Act identifies the exceptions wherein a court order is not required. Law enforcement agencies, other than those acting pursuant to the authority of the Internal Revenue Code and the Federal Securities Act of 1933 and 1934, are not excepted. The staff does not believe we have the authority to provide an exception for the State Securities Board.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900071

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: January 28, 2009

Proposal publication date: October 10, 2008

For further information, please call: (512) 305-7842



SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy adopts an amendment to §501.90, concerning Discreditable Acts, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9643) and will not be republished.

The section establishes the requirement for continued integrity by CPAs to the Board, its staff and consultants.

The amendment put licensees on notice that the Board believes that in addition to making deceitful or misleading statements to their clients they should not be making misleading or deceitful statements to the Board, its staff or the Board's consultants hired to assist in the investigation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900072

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: January 28, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.52

The Texas State Board of Public Accountancy adopts an amendment to §511.52, concerning Recognized Colleges and Universities, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9644) and will not be republished.

The section clarifies which colleges and community college programs are recognized by the Board.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900073

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: January 28, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §511.56

The Texas State Board of Public Accountancy adopts an amendment to §511.56, concerning Educational Qualifications under the Act, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9645) and will not be republished.

The section clarifies the education requirements for candidates for a license issued by the Board.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900074

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: January 28, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Definition of Accounting Courses, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9646) and will not be republished.

The section clarifies courses that the Board may consider in meeting the definition of accounting coursework for the CPA examination.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900075

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: January 28, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58, concerning Definitions of Related Business

Subjects, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9648) and will not be republished.

The section clarifies courses that the Board may consider in meeting the definition of business coursework for the CPA examination.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2009.

TRD-200900076

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: January 28, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.20

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance (Department), Division of Workers' Compensation (Division), adopts amendments to §133.20, regarding Medical Bill Submission by Health Care Provider, with changes to the proposed text published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9050).

In accordance with Government Code §2001.033, this order contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rule, and the reasons why the Division agrees or disagrees with some of the comments and proposals.

Changes were made to the proposed rule text in response to public comments received.

Section 133.20(b) incorporates into Division rules the provisions of new §408.0272 of the Texas Labor Code as added by House Bill (HB) 1005, enacted by the 80th Texas Legislature, Regular Session, effective September 1, 2007. There are no other rules or amendments anticipated in order to implement the section.

In an effort to provide billing provisions similar to those maintained in the group health system, §408.0272 provides, in pertinent part, that the time limit of 95 days for a health care provider to submit a claim for payment to the workers' compensation insurance carrier, as set forth in Labor Code §408.027(a), will not apply in three circumstances. The first circumstance is when the health care provider submits satisfactory proof to the Commissioner that the health care provider had filed for reimbursement within the 95 days but had filed with either the group accident and health insurance carrier where the injured employee is a covered insured, an HMO where the injured employee is a covered enrollee, or a workers' compensation insurance carrier other than the insurance carrier liable for payments. Section 408.0272(c) establishes that once a health care provider has been notified of the erroneous submission, the health care provider has 95 days to submit the claim for payment to the correct workers' compensation insurance carrier. The second exception is if the Commissioner determines that the failure to submit the claim during the 95 days was due to a catastrophic event that substantially interfered with the normal business operations of the health care provider. The third exception is where the parties agree to extend the period for submitting a claim for payment.

The amendments to §133.20(b) update the present rule, which is currently an incomplete statement of the deadlines for health care providers to submit claims for payment and clarify the applicability of the general processes outlined in Chapter 133 (relating to General Provisions) for these exceptions. At the time §133.20 became effective on May 2, 2006, the exceptions in Labor Code §408.0272 had not been enacted by the Legislature. The adopted amendment includes, by reference, those new exceptions enacted by §408.0272. These exceptions pertain to "timely submission" of a health care provider's claim for payment and do not affect a workers' compensation insurance carrier's ability to review a medical service for other issues such as medical necessity, relatedness, and/or compensability.

In response to public comments received, language was added to the rule text to clarify that the health care provider had 95 days to file the medical bill with the correct workers' compensation insurance carrier from the date that the health care provider received notice that the medical bill had originally been filed incorrectly.

The added language also requires the health care provider, when filing the medical bill with the correct workers' compensation insurance carrier, to provide sufficient documentation to demonstrate why one of the exceptions under §408.0272 would apply. The documentation must show that the health care provider had timely filed the medical bill with an incorrect insurance carrier during the initial 95 day period, that the Commissioner determined that the failure resulted from a catastrophic event that substantially interfered with the normal business operations of the health care provider, or that the delay in filing was the result of an agreement between the health care provider and the correct workers' compensation insurance carrier. Additional language was also included in the rule to clarify that the correctly filed medical bills are subject to the same billing, review, and dispute processes as they would

have been if they had been initially filed correctly and that the provisions of Chapter 133 would still apply.

Comment: Commenter offered a suggested format for the rule that restated the exceptions listed in Labor Code §408.0272 rather than use the shortened reference set forth in the proposed amendment and stated that to do so would simplify use by the system participants. Agency Response: The Division disagrees with the recommendation to restate the entire statutory language in the rule. However, further amendments have been adopted to provide clarity.

Comment: Commenter suggested that §133.20(b) be amended to establish a procedure for the presentation of medical bills to the Division and workers' compensation insurance carriers when submitting the medical bills under one of the exceptions provided in Labor Code §408.0272. Commenter also states that the suggested amendments would "constitute substantive changes that would require the Division to withdraw the proposed rule amendment." Agency Response: The Division disagrees that establishing a new procedure in the rule for the presentation of medical bills to the Division and workers' compensation insurance carriers is necessary. The Division also disagrees that a re-proposal of this rule is necessary. The Division clarifies that §408.0272 provides exceptions to the timeframe for health care providers to submit medical bills for reimbursement to workers' compensation insurance carriers, not the Division. Further, §408.0272 does not provide for a new billing and reimbursement structure for the medical bills. Medical bills submitted in accordance with §408.0272 are subject to the billing, review, and dispute processes established by Chapter 133. The exceptions set forth in §408.0272 have been in effect since September 1, 2007 and have functioned successfully since that time with the general parameters already set forth in Chapter 133. Any disputes regarding these exceptions shall be received by the Division and processed through the medical dispute process as set forth in Subchapter D. Language has been added to the adopted rule to clarify that medical bills submitted under the exceptions in §408.0272 are subject to the provisions of Chapter 133.

For: None

For, with changes: Service Lloyds Insurance Company and Insurance Council of Texas

Against: None

The amendments are adopted under the Texas Labor Code §§408.027(a), 408.0271, 408.0272, 413.015, 413.031, 402.00111 and 402.061.

Section 408.027(a) sets out the deadline for health care providers to submit claims for payment to the workers' compensation insurance carrier. Section 408.0271 sets forth notice requirements for workers' compensation insurance carriers denying a medical bill and requirements for health care providers appealing those denials. Section 408.0272 sets forth the exceptions to the deadline stated in §408.027. Section 413.015 requires workers' compensation insurance carriers to pay charges for medical services as provided in the statute. Section 413.031 sets forth the provisions related to medical dispute resolution. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§133.20. Medical Bill Submission by Health Care Provider.

(a) The health care provider shall submit all medical bills to the insurance carrier except when billing the employer in accordance with subsection (j) of this section.

(b) Except as provided in Labor Code §408.0272(b), (c) or (d), a health care provider shall not submit a medical bill later than the 95th day after the date the services are provided. In accordance with subsection (c) of the statute, the health care provider shall submit the medical bill to the correct workers' compensation insurance carrier not later than the 95th day after the date the health care provider is notified of the health care provider's erroneous submission of the medical bill. A health care provider who submits a medical bill to the correct workers' compensation insurance carrier shall include a copy of the original medical bill submitted, a copy of the explanation of benefits (EOB) if available, and sufficient documentation to support why one or more of the exceptions for untimely submission of a medical bill under §408.0272 should be applied. The medical bill submitted by the health care provider to the correct workers' compensation insurance carrier is subject to the billing, review, and dispute processes established by Chapter 133, including §133.307(c)(2)(A) - (H) of this title (relating to MDR of Fee Disputes), which establishes the generally acceptable standards for documentation.

(c) A health care provider shall include correct billing codes from the applicable Division fee guidelines in effect on the date(s) of service when submitting medical bills.

(d) The health care provider that provided the health care shall submit its own bill, unless:

(1) the health care was provided as part of a return to work rehabilitation program in accordance with the Division fee guidelines in effect for the dates of service;

(2) the health care was provided by an unlicensed individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider shall submit the bill;

(3) the health care provider contracts with an agent for purposes of medical bill processing, in which case the health care provider agent may submit the bill; or

(4) the health care provider is a pharmacy that has contracted with a pharmacy processing agent for purposes of medical bill processing, in which case the pharmacy processing agent may submit the bill.

(e) A medical bill must be submitted:

(1) for an amount that does not exceed the health care provider's usual and customary charge for the health care provided in accordance with Labor Code §§413.011 and 415.005; and

(2) in the name of the licensed health care provider that provided the health care or that provided direct supervision of an unlicensed individual who provided the health care.

(f) Health care providers shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills).

(g) Health care providers may correct and resubmit as a new bill an incomplete bill that has been returned by the insurance carrier.

(h) Not later than the 15th day after receipt of a request for additional medical documentation, a health care provider shall submit to the insurance carrier:

(1) any requested additional medical documentation related to the charges for health care rendered; or

(2) a notice the health care provider does not possess requested medical documentation.

(i) The health care provider shall indicate on the medical bill if documentation is submitted related to the medical bill.

(j) The health care provider may elect to bill the injured employee's employer if the employer has indicated a willingness to pay the medical bill(s). Such billing is subject to the following:

(1) A health care provider who elects to submit medical bills to an employer waives, for the duration of the election period, the rights to:

(A) prompt payment, as provided by Labor Code §408.027;

(B) interest for delayed payment as provided by Labor Code §413.019; and

(C) medical dispute resolution as provided by Labor Code §413.031.

(2) When a health care provider bills the employer, the health care provider shall submit an information copy of the bill to the insurance carrier, which clearly indicates that the information copy is not a request for payment from the insurance carrier.

(3) When a health care provider bills the employer, the health care provider must bill in accordance with the Division's fee guidelines and §133.10 of this chapter (relating to Required Billing Forms/Formats).

(4) A health care provider shall not submit a medical bill to an employer for charges an insurance carrier has reduced, denied or disputed.

(k) A health care provider shall not submit a medical bill to an injured employee for all or part of the charge for any of the health care provided, except as an informational copy clearly indicated on the bill, or in accordance with subsection (l) of this section. The information copy shall not request payment.

(l) The health care provider may only submit a bill for payment to the injured employee in accordance with:

(1) Labor Code §413.042;

(2) Insurance Code §1305.451; or

(3) §134.504 of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 9, 2009.

TRD-200900088

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: January 29, 2009

Proposal publication date: November 7, 2008

For further information, please call: (512) 804-4715

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.96

The Comptroller of Public Accounts adopts amendments to §3.96, concerning imposition and collection of a surcharge on certain diesel-powered motor vehicles, without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9051).

The amendments implement a legislative change made by Senate Bill 867, 79th Legislature, 2005, which eliminated the imposition of the surcharge on recreational vehicles that are not held or used in the production of income. Subsection (a)(1) is amended accordingly. The amendments also implement a legislative change made by Senate Bill 12, 80th Legislature, 2007, which extended the expiration of the law under Tax Code, §152.0215 until August 31, 2013. Subsection (g) is amended accordingly.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §152.0215.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2009.

TRD-200900036

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: January 26, 2009

Proposal publication date: November 7, 2008

For further information, please call: (512) 475-0387



SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.320

The Comptroller of Public Accounts adopts amendments to §3.320, relating to Texas emissions reduction plan surcharge; off-road, heavy-duty diesel equipment, without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9052).

The amendment to subsection (a)(1) reflects longstanding agency policy that the surcharge does not apply to certain equipment used directly in oil and gas exploration and production. The amendments to subsection (b)(1) - (4) implement a legislative change made by Senate Bill 12, 80th Legislature,

2007, which extended the expiration of the law under Tax Code, §151.0515 until September 1, 2013. Other changes to the section are for clarity.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0515.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2009.

TRD-200900042

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Effective date: January 26, 2009

Proposal publication date: November 7, 2008

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.109

The Comptroller of Public Accounts adopts the repeal of §9.109, concerning procedures for protesting preliminary findings of taxable value, without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9199). The section will be replaced by a new subchapter that breaks the current, lengthy rule into shorter, more manageable rules and sets out the items that must be included in a protest petition that adequately "specifies the grounds for objection" as required by Government Code, §430.303. The new rules would require the comptroller to refer protests that cannot be resolved without a hearing to the State Office of Administrative Hearings (SOAH). In addition to defining terms and addressing when a protest must be filed, the new rules address the scheduling order issued by a SOAH Administrative Law Judge (ALJ), the exchange of evidence by the parties after referral to SOAH, the conduct of the hearing by SOAH ALJ's, the ALJ's decision, the exceptions process, and the issuance of a final decision.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, §403.303(c), which requires that the comptroller adopt rules governing protests of preliminary findings.

The adopted repeal affects Government Code, §403.303.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 9, 2009.

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**SUBCHAPTER L. PROCEDURES FOR
PROTESTING PRELIMINARY FINDINGS OF
TOTAL TAXABLE VALUE**

34 TAC §§9.4301 - 9.4313

The Comptroller of Public Accounts adopts new §§9.4301 - 9.4313, concerning procedures for protesting preliminary findings of taxable value, with changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9199). The new rules will replace §9.109, which sets out the current procedures for protesting the preliminary findings of taxable value. The new rule(s) were developed, in part, because the comptroller will refer hearings on protests of the preliminary findings to the State Office of Administrative Hearings (SOAH), beginning in 2008. The current rule did not provide for such a referral. New procedures were required to conform comptroller procedures with SOAH procedures and processes and ensure a smooth, efficient referral and a fair hearing. The rules clarify the language and evidence that must be included in a petition to sufficiently state the grounds for objection to preliminary findings. The current rule is difficult for the public to use because it is lengthy and covers several different, but related, topics. The new rules break the longer rule down into shorter rules that each address a specific topic. The new rules govern the entire protest process. Among the matters that are addressed are; how and when to file a petition, extensions of time, what constitutes good cause for submitting evidence after the deadline, the burden of proof, how and when a protest will be referred to SOAH for hearing, the notice of hearing, issuance of a scheduling order, the exchange of evidence after referral to SOAH, the administrative law judge's powers and duties, how the hearing will be conducted, evidentiary rules, notice of the administrative law judge's proposed decision, exceptions to the proposed decision, and when the decisions become final.

During the proposed period, several comments were received and considered by the comptroller.

Comments on §9.4307(e) were received from James F. Ramsey, Ed Kliewer III, George Scott Christian for the Texas Taxpayer and Research Association (TTARA), Robert Mott, and Vance Liston. The commenters objected to subsection (e), which concerns action by the agency on an insufficient protest petition. Under the proposed rule, the division manager may determine that a protest petition does not meet the statutory and administrative rule requirements that apply to a petition protesting the preliminary findings. The commenter's objection was that the division manager should not be given the authority to reject a petition for an insufficient statement of the protest grounds, which is defined as a specific statement of the reasons for each change sought by the petitioner and the documentary evidence that supports each requested change. The commenters suggested that the authority to determine the sufficiency of a petition should be vested in a third party, such as an administrative law judge or

hearing examiner. One commenter stated that if the manager retained the authority to reject petitioner, an appeal to the comptroller or an administrative law judge should be permitted. (Presumably, the commenters refer to an Administrative Law Judge (ALJ) employed by SOAH.) The agency declined to make the suggested changes because it is not unprecedented for the authority to reject an appeal of an agency's actions or decision to reside with the agency whose actions or decisions are being appealed. To address the commenter's concerns, however, the agency changed the subsection (e) to provide more distance between the property value study and the individual making the decision. The rule provides for the comptroller or comptroller's designee to determine if a protest petition is sufficient and provides for exercise of discretion in making the decision.

James F. Ramsey, Vance Liston, and Ed Kliewer commented that the notice requirements in §9.4307(g) are vague and should be clarified. In addition, they objected to the requirement that the petitioners certify that notice has been delivered as required and suggested that the certification state that notice was mailed to the required parties. The agency agreed and clarified that a copy of the petition must be delivered to each affected party. The certification of delivery was changed to certification that a copy of the petition was mailed to each affected entity.

George Christian commented for TTARA that §9.4309(a) should be changed to make the referral to SOAH a ministerial, non-discretionary function. The comptroller declined to make the change because the comptroller by statute does not have the discretion to refuse to provide a hearing. Government Code, §403.303, gives school districts and taxpayers a right to a hearing on the entity's protest.

Robert Mott commented that the examples of a sufficient statement of grounds for the protest in §9.4307(f) should include a statement that they are advisory only and not binding on the ALJ. If this statement is not included, the commenter stated that the examples, particularly paragraphs (3) and (4), should be edited. The commenter stated that the example of documentary evidence in paragraph (3), in which the petitioner contends that a property was sold under duress, is not obtainable. The commenter stated that an executor would not swear that property was sold under duress because they "are liable for that kind of thing." The agency disagreed because agency appraisers have obtained these statements. The commenter objected also to the example in paragraph (4) of documentary evidence that personal property is included in the sale of real property. The example was a list, attached to the real property deed, of the items of personal property included in the sale price and the value of each. The commenter stated that this list is "virtually never done by real estate agents because they cannot get a commission on the sale of personal property." The comptroller does not agree that most real estate brokers misrepresent the basis on which their commissions are calculated, and did not make the change. The agency did not add the suggested language because the rule states that the paragraphs are examples, which is a self-explanatory term. Addition of the suggested language is therefore unnecessary, and would be redundant.

Robert Mott commented that §9.4305 should be changed to place the authority to determine if an extension of time should be granted with hearing examiners because the manager should not have this authority. The commenter noted that past hearing examiners have found for the petitioner over the division's objections. The agency declined to make the suggested change, but changed subsections (d) and (f) to provide for extensions of

time to be granted or denied by the director of the Property Tax Assistance Division. This change addresses the commenter's concern that the division manager is too close to the Property Value Study to make a fair decision.

The commenter stated that §9.4310(c)(5) and (7) should be deleted from the grounds on which the ALJ may dismiss a petition. The commenter stated that dismissal for failure to certify that notice was delivered was a trap for small districts. The commenter stated that dismissal because amended preliminary findings were filed does not make sense and the ground should be deleted or made very narrow. The agency declined to make the suggested changes because the ALJ is not required to dismiss on these grounds, and were the division to make a motion to dismiss on any of the grounds listed, the subject party would have an opportunity to present its argument against dismissal. The commenter stated also that §9.4311(e), which defines the comptroller's burden of proof, should be deleted because it does not correctly state the comptroller's burden. The agency deleted the provision.

The comptroller corrected an error in §9.4308(c) by deleting the word "mediation." The inclusion of mediation in the subsection was inadvertent and appeared to provide both a settlement conference and mediation, instead of providing petitioners with a choice to request either mediation or an informal conference before proceeding to a hearing. A change in the name of the comptroller division that is charged with conducting the Property Value Study occurred after publication of the proposed rules. To accommodate the change, the comptroller added a definition of "division" to §9.4301 and renumbered all paragraphs that follow 9.43.01(5). Specific references to the division's name were deleted from §9.4303 and §§9.4305 - 9.4312. The comptroller also deleted an unnecessary sentence concerning the means by which the manager may provide written approval to file protests through electronic transmission from §9.4307(d)(4) and corrected a grammatical error in subsection (f)(4) changing "than" to "that."

The new rules are adopted under Government Code, §403.303, which requires the comptroller to adopt procedural rules governing the conduct of the protest hearing.

The new rules implement Government Code, §403.303, which concerns protests of the comptroller's preliminary certification of school district total taxable property value.

§9.4301. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Agent**--The individual that the petitioner is required to designate in the petition to perform the following activities on behalf of the petitioner:

(A) receive and act on all notices, orders, decisions, exceptions, replies to exceptions, and any other communications regarding the petitioner's protest;

(B) resolve any matter raised in petitioner's petition;

(C) argue and present evidence timely submitted with the petition at petitioner's protest hearing, unless agent designates in writing another individual to argue and present timely submitted evidence; and

(D) any other action required of petitioner.

(2) **ALJ**--An Administrative Law Judge employed by the State Office of Administrative Hearings.

(3) **Appraisal district measures**--The comptroller's measures of the degree of uniformity and median level of appraisal of an appraisal district made under Tax Code, §5.10.

(4) **Decision**--

(A) **Proposed decision**--A finding made by the ALJ concerning a protest of preliminary findings of taxable value, subject to filing of exceptions by any party.

(B) **Final decision**--An official finding adopted by the deputy comptroller.

(5) **Division**--The Comptroller of Public Accounts division that is charged with conducting the Property Value Study and the performance of other programmatic functions related to the administration of the state property.

(6) **District**--A school district. District does not include an appraisal district.

(7) **Good cause**--Appropriate justification other than a claim that the periods provided by these rules are too short.

(8) **Person**--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(9) **Petition**--The document and supporting evidence filed by petitioner indicating disagreement with the comptroller's preliminary findings or appraisal district measures.

(10) **Petitioner**--A school superintendent, chief appraiser or eligible property owner who submits a petition seeking redetermination of the comptroller's preliminary findings or appraisal district measures. Unless the context clearly indicates otherwise, in this subchapter, the term "petitioner" includes petitioner's agent.

(11) **Preliminary findings**--The comptroller's findings of district property value delivered to a district and certified to the commissioner of education under Government Code, §403.302(f) or (g).

(12) **Protest**--A disagreement by a district, property owner, or appraisal district with the comptroller's preliminary findings or appraisal district measures initiated by timely filing the petition required by §9.4307 of this title (relating to Filing a Protest).

(13) **Ratio study**--A study designed to evaluate appraisal performance through a comparison of appraised values made for tax purposes with independent estimates of market value based either on sales prices or independent appraisals.

(14) **SOAH**--The State Office of Administrative Hearings.

§9.4302. Intent, Scope, and Construction of Subchapter H.

(a) **Intent and scope of Subchapter H.** This subchapter is intended to provide a petitioner with an informal, clear process for resolving a disagreement with the Comptroller of Public Accounts' preliminary findings of property value, certified to the commissioner of education pursuant to Government Code, §403.302(f) and (g), and the measures of degree of uniformity and the median level of appraisal made as required by Tax Code, §5.10. This section governs all aspects of a preliminary findings or appraisal district measures protest.

(b) **Construction of protest rule.** Rules concerning protests of the preliminary findings of property value certified to the commissioner of education pursuant to Government Code, §403.302(f) or (g) and the measures of degree of uniformity and the median level of appraisals made pursuant to Tax Code, §5.10, will be reasonably construed in

the rule's total context and in a manner that provides the parties with a reasonably informal protest process and hearing, and a fair decision for every protest.

(c) Unless otherwise provided, this subchapter shall be construed as provided by Code Construction Act, Government Code, Chapter 311.

§9.4303. *General Provisions.*

(a) In computing a period of time, the period begins on the day after the act or event in question and ends on the last day of the time period. If the last day of the time period is a Saturday, Sunday, or state or federal legal holiday, the period of time runs until the end of the first day that is neither a Saturday, Sunday, or state or federal legal holiday.

(b) A property owner may contact the division manager for information concerning the districts or appraisal districts that have filed a petition as required by this section. A district or appraisal district may contact the division manager for information concerning property owners that have filed a petition as required by this section.

§9.4304. *Changes in Preliminary Certification.*

(a) At any time before the date on which final changes in the preliminary findings are certified to the commissioner of education, the comptroller may certify to the commissioner of education amended preliminary findings.

(b) An amended preliminary finding is a change made by the comptroller to the district's preliminary findings that is certified to the commissioner of education and delivered to the district after the date on which preliminary findings for the district were originally certified and before the date on which final certification of changes in preliminary findings are certified.

(c) If the comptroller certifies amended preliminary findings that increase the district's total taxable value, the affected district, appraisal district, and property owners have a right to protest the findings in the manner required by this subchapter. The district's, appraisal district's, and property owner's time to protest begins to run on the date the amended preliminary findings are certified.

(d) An error in the comptroller's preliminary findings that was caused by an error in a district's annual report of property value or by a change in a district's certified tax roll may be corrected by timely filing a petition and otherwise complying with the requirements of this subchapter.

§9.4305. *Extensions of Time.*

(a) Before a hearing is referred to State Office of Administrative Hearings (SOAH), the division manager may, on the division's own motion, grant an extension of time for the limited purpose of correcting technical errors or omissions in a timely filed protest petition. Petitioner's failure to submit grounds for objection or all documentary evidence necessary to support the factual and legal contentions made in the petition is not a technical error or omission.

(b) At any time before a hearing is referred to SOAH, a petitioner may request an extension of time for any deadline by submitting a request for extension to the division manager.

(c) No more than one extension during an appeals period may be granted for each petitioner.

(d) An extension of time shall be requested in writing and submitted to the division director at least five days in advance of the original deadline for which the extension is requested. If requested in writing by the petitioner and for good cause shown, the division director may waive the requirement that the request for the extension be made five days in advance of the deadline.

(e) An extension may not extend the deadline for more than ten days.

(f) An extension may be granted by the division director only for good cause shown, and if the reason for the extension is not the petitioner's neglect, indifference, or lack of diligence. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline.

§9.4306. *Who May Protest.*

(a) A district may protest the preliminary findings of its taxable value.

(b) A district may protest the preliminary findings of taxable value of an audit within the district.

(c) An owner of property included in a sample used by the comptroller to determine the taxable value of a category of property in a district may protest the comptroller's preliminary findings of value if the total ad valorem tax liability on the owner's properties included in the category sample for the district is \$100,000 or more.

(d) An appraisal district may protest the comptroller's measures, made under Tax Code, §5.10, of the level and uniformity of property appraisals within the district.

(e) A protest filed by a property owner or an appraisal district will not be considered for any purposes to be a protest filed by a district.

(f) A petition must be signed by:

(1) the superintendent of the district, if it is a petition filed by a school district; or

(2) the property owner or the property owner's agent, if it is a petition filed by a property owner; or

(3) the chief appraiser of the appraisal district, if it is a petition filed by an appraisal district.

§9.4307. *Filing a Protest.*

(a) A petition for a protest of the preliminary findings of taxable value or measures of degree of uniformity or median level of appraisal must be filed within 40 days after the date the comptroller certifies preliminary findings of district taxable value to the commissioner of education.

(b) A petition for a protest of the preliminary findings of taxable value of an audit must be filed within 40 days of the date the district received the preliminary findings of taxable value.

(c) Except as provided by §9.4309(b)(5) or (f) of this title (relating to Scheduling a Protest Hearing), no additional evidence may be submitted after the deadline for filing a petition under subsection (a) or (b) of this section.

(d) All petitions and other documents related to a protest of the comptroller's preliminary findings or appraisal district measures shall be filed with the division manager. No document or petition is filed until actually received. However, any petition including supporting evidence is timely filed if it is sent to the division manager by:

(1) first-class United States mail in a properly addressed and stamped envelope or wrapper, and the envelope or wrapper exhibits a legible postmark affixed by the United States Postal Service showing that the petition including supporting evidence was mailed on or before the last day for filing; or

(2) an express mail corporation in a properly addressed envelope or wrapper, and the envelope or wrapper exhibits a legible date showing that the petition including supporting evidence was delivered

to the express mail corporation for delivery on or before the last day for filing; or

(3) fax received on or before the last day for filing if the petition including supporting evidence, is under ten pages in content, the original is mailed within three days of the fax and all procedures for submitting a protest have been followed; or

(4) electronic transmission, if petitioner obtains written permission from the division manager before the petition, evidence or both, are filed, or the division manager has approved the file format and form of transmission before the protest is filed.

(e) A petition shall show the petitioner's name and address, designate the petitioner's agent, and list for each category of property the grounds for objection to the preliminary findings for that category. Petitioner shall state the grounds for objection in the manner required by subsection (f) of this section. A petition that does not clearly specify, in the manner provided by subsection (f) of this section, the specific changes that petitioner alleges would improve the accuracy of the taxable finding or appraisal district measures does not adequately specify the grounds for objection as required by Government Code, §403.303(a) and may be rejected by the comptroller or the comptroller's designee without further review. The petition shall include the following information:

(1) the petitioner's grounds for objection, stated with the specificity and in the manner required by subsection (f) of this section;

(2) all documentary evidence, placed in order by category and item number, necessary to support the factual and legal contentions made in the petition; and

(3) the total taxable value petitioner claims is correct.

(f) The comptroller has been provided sufficient grounds for objection if the petitioner's protest lists, by property category, each change that the petitioner alleges would improve the accuracy of the taxable value finding or appraisal district measures, and provides the reason that each change will make the findings more accurate. An allegation that an item included the sample for a category of property should be adjusted, deleted from the sample, or treated differently than other items in the sample provides sufficient notice of the grounds for objection if the petitioner: identifies the sample item that petitioner alleges should be adjusted, deleted or treated differently; states for each item a specific reason or reasons why the item should be treated as requested by petitioner, and provides documentation or other evidence that supports the substance of each allegation. Without supporting documentation or other evidence to support the allegation, an allegation that a sample item is flawed and should be adjusted, deleted, or treated differently than the other items in the sample does not provide sufficient notice to the comptroller of the grounds for the petitioner's objection. The following are examples of sufficient grounds for objection:

(1) Sale A should be deleted. It is not an arms-length transaction because the buyer and seller are closely related. Included with the petition is a copy of a deed filed with the county clerk that indicates that the seller is related to the buyer and a statement from the buyer that she is the seller's daughter.

(2) Sale B should be deleted. It is not an arms-length transaction because it was made under duress. The sale is a "1031 exchange," which is a sale of real property in which either the buyers or sellers obtained or attempted to obtain the federal income tax benefit authorized by 26 U.S. C. §1031. The buyer did not start to search for an appropriate property until the month before the deadline for making the exchange. The buyer was under duress because she had to meet the deadline, so she paid more than market value for the property. Included with the petition is the buyer's signed statements that she bought the

property when she did to avoid paying capital gains taxes and paid a higher price that she would have if she had not needed to buy the property quickly.

(3) Sale C should be adjusted because it sold with personal property. The sale price for the real property was actually \$190,000 because the buyers purchased the seller's commercial kitchen appliances and fitness equipment that included a commercial quality treadmill and recumbent bicycle. The personal property is listed and valued in an attachment to the deed. Included with the petition is the deed and the attachment verifying the personal property included in the sale and its value at the time of sale.

(4) Sale D should be deleted because it is an estate sale and the sellers were forced to sell the property without regard to market value because the estate's debts had to be paid. Attached with the protest is a deed that shows it to be an estate sale and a statement from the seller that the estate's debts forced the seller to sell the property to the first willing buyer less than a month after the owner's death.

(g) A district shall deliver a copy of its protest petition to each appraisal district that appraises property for the district. An appraisal district shall deliver a copy of its protest petition to each district that participates in the appraisal district. A property owner shall deliver a copy of its protest petition to each school district and appraisal district in which the property under protest is located. The district's, appraisal district's, and property owner's petition shall contain a certification that a copy of the petition was mailed to each affected party as required by this subsection.

(h) The petition must contain a statement by the person signing the petition that, to the best of the person's knowledge, the evidence contained in the petition is true and correct.

§9.4308. Prehearing Matters.

(a) After reviewing a protest, the division will send petitioner's agent a recommendation and a form on which the petitioner may indicate agreement or disagreement with the division's recommendation, and request an informal settlement conference, non-binding mediation with a mediator designated by the comptroller, or a hearing before a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).

(b) If the petitioner requests an informal settlement conference or mediation, the division will schedule a time for the informal settlement conference or mediation. The division will then notify the petitioner of the date, time, and place of the settlement conference or mediation.

(c) If a petitioner and the division are unable to resolve all of the issues raised in a petitioner's protest through an informal settlement conference, the petitioner will be given the opportunity to request a hearing before a SOAH ALJ.

(d) If a petitioner requests mediation, both parties to the mediation will appear before a mediator selected by the comptroller, who will listen to the evidence and argument presented by the parties. Any agreements reached as a result of the mediation must be documented in writing signed by all affected parties. If the parties are unable to resolve all issues raised in the petition through mediation, either party may request a hearing.

(e) Each party shall bear its own costs for participating in the mediation. If a non-comptroller employee is designated as a mediator, costs of the mediator's time and expenses shall be borne equally by all the parties.

§9.4309. Scheduling a Protest Hearing.

(a) Referral of a protest to State Office of Administrative Hearings (SOAH) may be made only by the division. The referral is initiated by filing with SOAH a request for setting of hearing that requests that the hearing be conducted on a date certain. At the time the referral is initiated, the division shall also provide to SOAH:

- (1) a copy of the petition;
- (2) notice of any related hearings that should be consolidated; and
- (3) an accurate service list.

(b) Following receipt of the request for assignment of Administrative Law Judge (ALJ) form, SOAH shall assign the case a docket number, assign an ALJ, and issue a scheduling order for the case that:

- (1) notifies all parties in writing of the ALJ assigned to the case;
- (2) schedules a hearing on the protest to be held not later than 45 days after the date of the referral;
- (3) requires the division, no later than 20 days before the date of the hearing, to file with the ALJ and provide petitioner with a copy of:

(A) all documentary evidence that the division intends to offer in response to the evidence petitioner filed with the petition;

(B) a witness list, and

(C) a summary of the testimony that each witness will provide at the hearing;

(4) requires the petitioner, no later than 10 days before the date of the hearing, to file with the ALJ and provide the division with a copy of:

(A) all documentary evidence that the petitioner intends to offer in response to the documentary evidence filed by the division,

(B) a witness list, and

(C) a summary of the testimony that each witness will provide at the hearing;

(5) provides that no party may offer evidence at the hearing that was not provided as required by the scheduling order unless the party shows good cause why the evidence was not provided in accordance with the scheduling order.

(c) Hearings shall be held at a location designated by SOAH.

(d) Following receipt of the scheduling order, the comptroller shall deliver notice of the date, time, and place fixed for a hearing to each petitioner. The notice must be delivered not later than ten days before the date of the hearing.

(e) Not less than five days before a scheduled protest hearing, the division or a petitioner may request a preliminary conference with the SOAH ALJ to clarify the issues for the hearing or resolve the protest. If the request is made, a conference call shall be scheduled during business hours at a time mutually agreeable to the ALJ, the division, and the petitioner. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing.

(f) At a preliminary conference or at any other time before a scheduled hearing, either party may request that the ALJ issue an amended scheduling order. Any amended scheduling order shall provide that no party may offer evidence at the hearing that was not provided as required by the amended scheduling order unless the party

shows good cause why the evidence was not provided in accordance with the amended scheduling order.

§9.4310. Administrative Law Judges Powers.

(a) The Administrative Law Judge (ALJ) shall conduct a protest hearing in a manner insuring fairness, the reliability of evidence, and the timely completion of the hearing. The ALJ shall have the authority necessary to receive and consider all evidence and propose decisions. The ALJ's authority includes, but is not limited to, the following:

(1) establish the comptroller's jurisdiction concerning the protest, including whether a timely protest has been filed or whether an extension of time should be granted;

(2) set hearing dates;

(3) rule on motions and the admissibility of evidence;

(4) designate parties and establish the order of presentation of evidence, except that the division, which is the party with the burden of proof, shall always have the right to present its evidence and argument on any issue prior to the parties protesting that issue;

(5) consolidate related protests;

(6) conduct a single hearing that provides for:

(A) participation by the affected district(s), appraisal district, and any property owner that has filed a valid and timely petition, if the hearing concerns preliminary findings of taxable value or the degree of uniformity and median level of appraisal; or

(B) participation by the affected district(s) and the commissioner of education, if the hearing concerns the preliminary findings of an audit of a district's taxable property value.

(7) conduct hearings in an orderly manner and expel from any proceeding any individuals who, after an appropriate warning, fail to comport themselves in a manner befitting the proceeding and continue with the proceeding, hear evidence, and render a decision on the protest;

(8) administer oaths to all persons presenting testimony;

(9) examine witnesses and comment on the evidence;

(10) insure that evidence, argument, and testimony are introduced and presented expeditiously;

(11) refuse to hear arguments that are repetitious, not confined to matters raised in the petition, not related to the evidence or that constitute mere personal criticism;

(12) accept and note any petitioner's waiver of any right granted by this rule;

(13) limit each hearing to two hours for presentation of evidence and argument or extend the two-hour time limit in the interest of a full and fair hearing; and

(14) exercise any other powers necessary or convenient to carry out the ALJ's responsibilities and to insure timely certification of changes in preliminary findings to the commissioner of education.

(b) The ALJ may take official notice of any matter that trial judges may judicially notice. Petitioners in a protest in which official notice is taken shall have an opportunity to contest the matter.

(c) The ALJ may entertain motions for dismissal at any time for any of the following reasons:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

- (3) withdrawal of protest;
- (4) moot questions or obsolete petition;
- (5) failure to certify that notice of protest was filed as required by §9.4307 of this title (relating to Filing a Protest), or failure to actually file notice as required by §9.4307 of this title;

(6) an appraisal district's protest would result in an increase to a school district's preliminary findings of total taxable value; or

(7) the comptroller has certified amended preliminary findings as allowed by §9.4307 of this title.

(d) The ALJ may grant a request to postpone a protest hearing if good cause is shown and doing so would not prevent timely certification of changes in the preliminary findings to the commissioner of education. A request to postpone must be in writing, show good cause for the postponement, and be delivered five days before the date the protest hearing is scheduled to begin. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline. If requested in writing by the petitioner and for good cause shown, the ALJ may waive the requirement that the request for postponement be made five days in advance of the deadline.

(e) The ALJ shall determine the admissibility of the evidence. Any party may object to the admission of evidence and the objection will be ruled on and noted on the record. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. The ALJ may receive any part of the evidence in writing.

(f) The ALJ in a protest may not communicate outside a protest hearing, directly or indirectly, with any agency, person, petitioner or petitioner's agent regarding any issue of fact or law relating to the protest unless all parties in the protest have notice and opportunity to participate.

§9.4311. Conduct of Hearing.

(a) The Administrative Law Judge (ALJ) shall convene a hearing for a protest.

(b) All protests heard by the ALJ shall be recorded. A petitioner will be provided a copy of the recording after a written request and payment of a cost-based fee. A petitioner may at any time make arrangements for and bear the cost of having a hearing recorded and transcribed by a court reporter, provided the division and the ALJ timely receive a copy of the transcript.

(c) All proceedings are open to the public and are held in Austin, unless the ALJ designates another place for the hearing. The ALJ may close a hearing, on the ALJ's own motion or on the motion of any party, if confidential information may be disclosed during the hearing.

(d) Hearings shall be conducted in accordance with this section. The Texas Administrative Procedures Act does not apply.

(e) Each petitioner may present oral or written argument on any matter raised by the petition. Argument shall be confined to the evidence and to arguments of other parties. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing.

(f) Unless the ALJ permits multiple representatives to be heard in a protest hearing, no more than one representative for each party or aligned group of parties shall be heard in the hearing on any petition. An agent may designate, and the ALJ may approve, a reasonable number of individuals to present argument and timely submitted evidence. Nothing in this subsection limits the presentation of evidence through witness testimony.

(g) The ALJ shall establish the order of proceeding (except as noted in subsection (d) of this section), and is responsible for closing the record.

(h) An attorney who appears in a protest hearing must comply with §3.08 of the Texas Disciplinary Rules of Professional Conduct.

§9.4312. Proposed Decision, Exceptions.

(a) The Administrative Law Judge (ALJ) shall prepare a proposed decision that includes a statement of the reasons for the proposed decision.

(b) The ALJ shall serve the proposed decision on the deputy comptroller, the petitioner, and the division manager by facsimile machine, if available, by electronic mail, or by using an overnight mail delivery service.

(c) A party adversely affected by the proposed decision may, within ten days after the date the proposed decision is sent by facsimile machine, electronic mail, or delivered to an overnight delivery service, file exceptions by delivering the original documents to the ALJ.

(d) Replies to exceptions shall be filed in the same manner within 20 days after the proposal for decision is sent by facsimile machine, electronic mail, or delivered to an overnight delivery service.

(e) A copy of each exception and reply shall be served promptly on all other parties to the protest. Certification of service indicating that the exceptions were served on all other parties to the protest shall be furnished to the ALJ. On the motion of a party or on the motion of the ALJ, the ALJ may withhold consideration of a party's written exceptions if the party fails to:

(1) provide the copies required by this subsection to all other parties to the protest; or

(2) provide the ALJ with the certification of service required by this subsection.

(f) The ALJ may, on the ALJ's own motion or for good cause shown, extend or shorten the time in which to file exceptions or replies.

(g) The parties shall direct motions for extension of time in which to file exceptions or replies, or both, to the ALJ. A party's motion for extension of time shall be filed no later than five days before the applicable deadline for submission of exceptions or replies and shall demonstrate either:

(1) good cause for the requested extension; or

(2) agreement of all other parties to the extension.

(h) The ALJ shall review all exceptions and replies and notify the referring agency, within 15 days of the deadline for filing a reply to the exceptions, whether the ALJ recommends changes to the proposed decision.

§9.4313. Final Decision.

(a) A proposed decision is final, in either its original or amended form, on the date signed by the deputy comptroller.

(b) A final decision ordering changes to preliminary findings made as a result of a school district's protest will change the preliminary findings for the appraisal district in which the school district is located.

(c) A final decision ordering changes to preliminary findings made as a result of an appraisal district's protest will change the preliminary findings for the school districts participating in the appraisal district.

(d) A final decision ordering changes to preliminary values made as a result of a property owner's or district's protest will change the measures for an appraisal district.

(e) A final decision ordering changes to preliminary findings made as a result of a property owner's protest will change the preliminary findings for the school district where the property which is the subject of the protest is located. A property owner's preliminary value may be changed by a protest brought by a school district or appraisal district.

(f) The comptroller shall deliver written notice of the final decision to each protesting petitioner.

(g) Certification of changes to preliminary findings. Unless the comptroller determines that circumstances require otherwise, the comptroller shall certify to the commissioner of education all changes to the preliminary findings on or before August 15 of the year following the year of the study.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 9, 2009.

TRD-200900087

Ashley Harden

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: January 29, 2009

Proposal publication date: November 14, 2008

For further information, please call: (512) 475-0387



PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §302.5

The State Board of Trustees of the Texas Emergency Services Retirement System (System) adopts amendments to 34 TAC §302.5, regarding correction of errors in membership or qualified service in the System, with changes to the text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5508). The rule as adopted adds a requirement that the form for correction of errors be provided by the System.

Amended rule §302.5 simplifies the procedure for the correction of errors in enrolling members or granting service credit by eliminating the requirements of a formal letter and a copy of meeting minutes of a local board showing the change and substituting submission of a prescribed form. The commissioner has the authority to require additional information on a case-by-case basis.

Two comments were received on the proposed rule, both of which questioned whether the Commissioner needed the authority to require further documentation of an error. Because the State Board of Trustees determines that flexibility in proving errors is an essential element in individual cases, the State Board respectfully disagrees with the comments and retains the provision to require additional documentation.

This agency hereby certifies that the amended rule has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

The amended rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System. No other statutes, articles, or codes are affected by the amended rule.

§302.5. Correction of Errors.

(a) A local board may correct an error in enrollment in membership or computation of qualified service by completing and submitting to the commissioner a form provided by the pension system. The completed form must be:

(1) signed by the chair and secretary of the local board and the administrative head of the department; and

(2) accompanied by any applicable past due contributions necessitated by the change.

(b) The Commissioner may require the local board to provide additional documentation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2009.

TRD-200900107

Craig Hudgins

General Counsel

Office of the Fire Fighters' Pension Commissioner

Effective date: February 1, 2009

Proposal publication date: July 11, 2008

For further information, please call: (512) 463-9935



CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.10

The State Board of Trustees of the Texas Emergency Services Retirement System (System) adopts amendments to 34 TAC §310.10, regarding voluntary payments by departments participating in the System to provide benefit enhancements for annuitants with changes to the text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5508). The rule as adopted differs very slightly from the proposed rule as published by removing confusing references to "one-time" increases.

The amended rule specifies five kinds of post-retirement increases that a department participating in the System may make to annuitants' benefits: an additional one-time payment, a cost-of-living adjustment based on an annual increase in the consumer price index, an annuity increase to a minimum monthly amount, an annuity increase of a specified amount for each year of service, or a percentage increase other than a cost-of-living adjustment. The amended rule allows a department to apply an increase to only fully vested annuitants if it so chooses.

Four comments were received on the proposed rule, two of which questioned whether the rule was too restrictive in specifying post-retirement increases and two of which asked for more clarification. Because departments have had no guidance in the past in adopting post-retirement increases, the State

Board of Trustees respectfully disagrees with the comments and determines, in adopting the rule, that departments and their annuitants will be better served than before adoption of the amended rule.

This agency hereby certifies that the amended rule has been reviewed by legal counsel and found to be within the agency's legal authority to adopt and further certifies that the amended rule has been reviewed by the System's retained actuaries and found to be cost neutral.

The amended rule is adopted under the statutory authority of Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §864.0135, which specifically authorizes the State Board of Trustees to adopt such a rule. No other statutes, articles, or codes are affected by the amended rule.

§310.10. Voluntary Payments by Departments.

(a) A participating department, as authorized by this section, may make one or more supplemental payments to retirees and other beneficiaries of the pension system, or may provide an increase in the amount of annuities paid to retirees and other beneficiaries of the system. A department may choose to apply a supplemental payment or increase in annuities to all beneficiaries as of the date of the payment or increase or to only those whose benefits are derived from a person who was eligible to retire under §308.1(a) of this title (relating to Eligibility for Retirement Annuity) or with a specified greater number of years of qualified service.

(b) An increase in benefits may consist of:

(1) an additional payment that does not exceed 100 percent of an annuitant's monthly scheduled payment;

(2) an annuity increase based on the 12-month increase in the Consumer Price Index for All Urban Consumers as of December of the preceding year;

(3) an increase to allow each annuity to reach a minimum monthly amount;

(4) an increase that adds to each annuity a specified amount for each whole year of credited service for the department; or

(5) a percentage increase to each annuity.

(c) Before it may implement a supplemental payment or annuity increase under this section, a participating department shall:

(1) obtain from the commissioner a determination from the system's actuary that the department's payments to the pension system will be sufficient to finance the anticipated additional benefits; and

(2) contract with the commissioner to make quarterly payments to the system that are necessary to finance the increase in benefits.

(d) A supplemental payment or increase in benefits must apply to all annuitants in the same classification but may be based on persons who qualified for an annuity under a previously lower contribution rate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2009.

TRD-200900106

Craig Hudgins

General Counsel

Office of the Fire Fighters' Pension Commissioner

Effective date: February 1, 2009

Proposal publication date: July 11, 2008

For further information, please call: (512) 463-9935

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

State Council on Competitive Government

Rule Transfer

Title 1, Part 16

The State Council on Competitive Government is administratively transferring its rules from Title 1, Administration, Part 16 to Title 34, Public Finance, Part 14 of the *Texas Administrative Code*. The transfer is being made at the request of the Texas Register to help with reorganization of Title 1.

With this transfer, only the Title and Part numbers will change. The Council's rules will keep the same chapter and section numbers, and the rule text will not change.

The transfer was effective on January 1, 2009.

Please refer to Figure: 1 TAC Part 16 to see the complete conversion chart.

TRD-200900096



Rule Transfer

Title 34, Part 14

The State Council on Competitive Government is administratively transferring its rules from Title 1, Administration, Part 16 to Title 34, Public Finance, Part 14 of the *Texas Administrative Code*. The transfer is being made at the request of the Texas Register to help with reorganization of Title 1.

With this transfer, only the Title and Part numbers will change. The Council's rules will keep the same chapter and section numbers, and the rule text will not change.

The transfer was effective on January 1, 2009.

Please refer to Figure: 1 TAC Part 16 to see the complete conversion chart.

TRD-200900183



Figure: 1 TAC Part 16

Current Rules from Title 1, Part 16 State Council on Competitive Government Chapter 401. Administration			Transferred to Title 34, Part 14 State Council on Competitive Government Chapter 401. Administration		
Subchapter	Section	Heading	Subchapter	Section	Heading
A		General Rules	A		General Rules
	§401.1	General Statement of Purpose		§401.1	General Statement of Purpose
	§401.2	Definitions		§401.2	Definitions
	§401.3	Exemption from State Purchasing Laws		§401.3	Exemption from State Purchasing Laws
	§401.4	Reporting Cost Savings		§401.4	Reporting Cost Savings
B		Council Meeting Guidelines and Requirements	B		Council Meeting Guidelines and Requirements
	§401.21	Council Officers		§401.21	Council Officers
	§401.22	Designees		§401.22	Designees
	§401.23	Meetings		§401.23	Meetings
	§401.24	Agenda for Council Meetings		§401.24	Agenda for Council Meetings
	§401.25	Record of Meetings		§401.25	Record of Meetings
	§401.26	Voting Procedures		§401.26	Voting Procedures
	§401.27	Public Comment		§401.27	Public Comment
	§401.28	Public Hearings		§401.28	Public Hearings
C		Identification and Review of State Services	C		Identification and Review of State Services
	§401.41	Requirements for Suggestions		§401.41	Requirements for Suggestions
	§401.42	Submission and Receipt of Suggestions		§401.42	Submission and Receipt of Suggestions
	§401.43	Agency Information for Identification of Services		§401.43	Agency Information for Identification of Services
	§401.44	Designation of Identified State Services		§401.44	Designation of Identified State Services
	§401.45	For Review of Identified State Services		§401.45	For Review of Identified State Services
	§401.46	Determination To Subject an Identified State Service to Competition		§401.46	Determination To Subject an Identified State Service to Competition
	§401.47	Requirement that State Agencies Engage in a Competitive Process		§401.47	Requirement that State Agencies Engage in a Competitive Process
	§401.48	Development of Competitive Process		§401.48	Development of Competitive Process
	§401.49	Conflict of Interest		§401.49	Conflict of Interest

D		Evaluation of Proposals	D		Evaluation of Proposals
	§401.61	Minimum Requirements for Proposals		§401.61	Minimum Requirements for Proposals
	§401.62	Evaluation		§401.62	Evaluation
E		Duties of Affected Agencies	E		Duties of Affected Agencies
	§401.81	Duties of Affected State Agencies		§401.81	Duties of Affected State Agencies
	§401.82	Disposal of Surplus and Salvage Property		§401.82	Disposal of Surplus and Salvage Property
F		Monitoring of Services	F		Monitoring of Services
	§401.101	Monitoring		§401.101	Monitoring
	§401.102	Minimum Monitoring Guidelines		§401.102	Minimum Monitoring Guidelines
	§401.103	Security Requirements		§401.103	Security Requirements
	§401.104	Historically Underutilized Businesses		§401.104	Historically Underutilized Businesses
	§401.105	Contract Modification Notification by Contracting Agency to the Council		§401.105	Contract Modification Notification by Contracting Agency to the Council

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Polygraph Examiners Board

Title 22, Part 19

The Polygraph Examiners Board proposes to review Chapter 391, Polygraph Examiner Internship, §§391.1 - 391.10, pursuant to the Texas Government Code, §2001.039.

The Board will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Comments on the proposed review may be submitted to Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087 MSC 0700, Austin, Texas 78773-0001.

TRD-200900081

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Filed: January 8, 2009



The Polygraph Examiners Board proposes to review Chapter 393, General, §§393.1, 393.3 - 393.7, and 393.9 - 393.11, pursuant to the Texas Government Code, §2001.039.

The Board will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Comments on the proposed review may be submitted to Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087 MSC 0700, Austin, Texas 78773-0001.

TRD-200900082

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Filed: January 8, 2009



The Polygraph Examiners Board proposes to review Chapter 395, Code of Operating Procedure of Polygraph Examiners, §§395.1 - 395.6, 395.8 - 395.11, 395.13 - 395.16, and 395.18 pursuant to the Texas Government Code, §2001.039.

The Board will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Comments on the proposed review may be submitted to Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087 MSC 0700, Austin, Texas 78773-0001.

TRD-200900083

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Filed: January 8, 2009



Adopted Rule Reviews

Texas Agriculture Resources Protection Authority

Title 4, Part 7

The Texas Department of Agriculture (the department) adopts the review Title 4, Texas Administrative Code, Part 7, Chapter 101, Subchapter A, concerning Routine Procedures for the Agriculture Resources Protection Authority (Authority), without changes to the proposal published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8947). No comments were received on the proposal.

Pursuant to the Texas Government Code, §2001.039, state agencies are required to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Chapter 101, Subchapter A, by the department at this time indicates that the subchapter should be repealed. The Authority was abolished by the Texas Legislature during the 79th Legislative Session, 2005. The Authority's rules were, in effect, voided and no longer in effect upon abolishment of the Authority; therefore, Subchapter A is no longer needed. The proposed repeal of Chapter 101, Subchapter A, §§101.1 - 101.3 and §101.20 was also published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8855). No comments were received on the proposed repeal.

TRD-200900110
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Agriculture Resources Protection Authority
Filed: January 12, 2009

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Polygraph Examiners Board

Title 22, Part 19

The Polygraph Examiners Board adopts the review of Chapter 397, General Rules of Practice and Procedure, §§397.1 - 397.33, pursuant to the Texas Government Code, §2001.039.

The proposed review was published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7577).

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the rule review.

This concludes the review of Chapter 397, General Rules of Practice and Procedure.

TRD-200900079

Frank DiTucci
Executive Officer
Polygraph Examiners Board
Filed: January 8, 2009

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The Polygraph Examiners Board adopts the review of Chapter 401, Grievance Policy, §401.1, pursuant to the Texas Government Code, §2001.039.

The proposed review was published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7577).

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the rule review.

This concludes the review of Chapter 401, Grievance Policy.

TRD-200900080
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Filed: January 8, 2009

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

State Office of Administrative Hearings

Correction of Error

The State Office of Administrative Hearings (SOAH) adopted new Chapter 159, Subchapter C, concerning Witnesses and Subpoenas, in the January 16, 2009, issue of the *Texas Register* (34 TexReg 330). New Subchapter C, comprised of §159.101 and §159.103, was adopted with changes and both sections were republished.

On page 332, second column, the second sentence of §159.103(d) is incorrect.

Subsection (d) should read as follows:

"(d) Subpoena form. A subpoena must be issued on the form provided at www.soah.state.tx.us."

TRD-200900097

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 2, 2009, through January 8, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council's web site. The notice was published on the web site on January 14, 2009. The public comment period for this project will close at 5:00 p.m. on February 13, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Oynx Pipeline Company; Location: The project is located in Nueces Bay, through State Tracts 707 and 708, from the north shoreline of Nueces Bay between White's Point and Portland in San Patricio County, up into Rincon Canal in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; POB coordinates are Easting: 655439; Northing: 3083768. POE coordinates are Easting: 655786; Northing: 3077900. Project Description: The applicant proposes to install a 2.5-mile-long, 16-inch O.D. natural gas pipeline across Nueces Bay by boring from upland locations and entering bay locations, and thence trenching and excavating once in Nueces Bay. Approximately 15,276 feet will be trenched and 6,717 feet will be bored. Crossing of existing pipelines will be accomplished by excavation. Temporary impacts to the bay bottom include 0.70 acres attributed to trenching, 0.92 acres to the bore

pit excavation, and 1.29 acres to the pipeline crossing. CCC Project No.: 09-0066-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00991 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: City of Corpus Christi; Location: The project is located at Laguna Shores Road, between Graham and Husslin' Hornet Streets, along the western shore of the Laguna Madre, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Oso Creek NE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 669940; Northing: 3060190. The proposed mitigation site is a 7.4-acre area located on the south-east corner of the Laguna Shores Wastewater Treatment Plant Property, which is adjacent to the Laguna Madre approximately 0.7 mile north of the proposed project site. The project can be located on the U.S.G.S. quadrangle map titled: Oso Creek NE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 670300; Northing: 3061650. Project Description: The applicant proposes to elevate and improve the Laguna Shores Road roadway to ensure traffic flow is maintained during high tides, meet future drainage requirements, and provide erosion protection to protect the roadway bed during high tide. CCC Project No.: 09-0067-F1. Type of Application: U.S.A.C.E. permit application #SWG-2006-01048 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Marquette Galveston Investments; Location: The project is located on a 332.18-acre site adjacent to West Galveston Bay between Eckert's Bayou and the access channel to the Spanish Grant Subdivision, in the City of Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 312554.78; Northing: 3234637.75. Project Description: Within the 332.18-acre tract, there are 141.72 acres of estuarine wetlands, 7.55 acres of palustrine wetlands and 182.91 acres of non-jurisdictional coastal prairie uplands. The applicant proposes to impact (through excavation and fill activities) 2.45 acres of estuarine wetlands, 1.74 acres of palustrine wetlands and 123.80 acres of non-jurisdictional coastal prairie uplands during the construction of a full-service marina and mixed-use development known as The Marina at West Beach. The marina would include single-family housing, single-family attached housing, and neighborhood commercial properties. The applicant proposes to construct a mixture of bulkheads and soft shorelines in the marina basin and either articulated block mats or concrete rubble revetment is proposed to be installed along the shoreline of the access and circulation channels. The proposed berths would be either fixed or floating, depending on their location in the marina. The applicant proposes to construct approximately 300 in-water slips. To compensate for impacts to wetlands the applicant proposes to permanently protect a 200.88-acre onsite conservation zone comprised of 55.8 acres of prairie uplands, 5.81 acres of palustrine wetlands and 139.27 acres of estuarine wetlands. The applicant also proposes to restore 2.75 acres of estuarine habitat within a previously excavated stock pond by beneficial use of portions of the dredged materials from the marina and

access channel. CCC Project No.: 09-0069-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01956 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Marquette Galveston Investments; Location: The project is located on a 547.07-acre tract of land on West Galveston Island in the City of Galveston and Galveston County. It begins approximately one mile west of the seawall at 8-Mile Road and continues to 11-Mile Road. The project boundary comprises most of the property between FM 3005 and Stewart Road, with 1 parcel (Tract 1) totaling 64.26 acres located on the Gulf side of FM 3005. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 314204.77; Northing: 3234206.78. Project Description: Within the 547.07-acre tract, there are 394.29 acres of non-jurisdictional coastal prairie uplands, 151.48 acres of palustrine wetlands, and 1.30 acres of estuarine wetlands. The applicant proposes to discharge fill material into 50.36 acres of palustrine wetlands and 233.85 acres of non-jurisdictional coastal prairie uplands to construct building and infrastructure sites associated with a mixed use residential and resort development known as The Preserve at West Beach. There would be no impacts to estuarine wetlands. The development would include single-family lots, attached single-family units, mid-rise condominiums, commercial areas, common area/parks, and internal rights-of-way. To compensate for impacts to jurisdictional wetlands the applicant proposes to permanently protect a 128.36-acre conservation zone comprised of 71.39 acres of uplands and 56.97 acres of palustrine wetlands. The applicant proposes restoration and enhancement of existing degraded palustrine wetlands in the conservation zone as compensation. CCC Project No.: 09-0070-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01958 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200900099

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: January 12, 2009

Comptroller of Public Accounts

Notice of Intent to Amend Contract

Pursuant to Chapters 403 and Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on

behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the following notice of intent to increase a major consulting services contract with AKF Consulting LLC as follows:

The contract with AKF Consulting LLC will be amended and increased from not-to-exceed \$75,000.00, to not-to-exceed \$125,000.00. The term of the contract is from November 27, 2007, through December 31, 2009. There is one (1) option to renew for one (1) additional one (1) year term.

The notice of request for proposals was published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7539) (RFP #181a).

The contractor provides consulting and technical advice and assistance to the Comptroller and the Texas Prepaid Higher Education Tuition Board in the ongoing administration of the new Texas Tuition Promise Fund (formerly known as the Texas Tomorrow Fund II).

TRD-200900068

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: January 8, 2009

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/19/09 - 01/25/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/19/09 - 01/25/09 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200900112

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 12, 2009

Texas Education Agency

Notice of Texas Education Agency Secure Environment (TEA SE) Access and Notice of the Grant Writer Designation Form for the 2009-2010 Adult Education and Family Literacy Program and Temporary Assistance for Needy Families Program

The competitive grant application for the 2009-2010 Adult Education and Family Literacy (Adult Ed) Program and Temporary Assistance for Needy Families (TANF) Program will be available in the Texas Education Agency (TEA) eGrants system with an expected publication date of February 27, 2009. All external customers and users anticipating a need to access the eGrants system to submit a competitive application under the Adult Ed and TANF programs, or those who anticipate being part of a shared services arrangement, must have a username and password for the Texas Education Agency Secure Environment (TEA SE) to access the eGrants system. Participants are encouraged to re-

quest TEA SE access no later than February 2, 2009, to obtain a TEA SE username and password in a timely manner.

Any users who have previously applied for an eGrants TEA SE username and password do not need to reapply. However, users are encouraged to review the role previously requested for their eGrants username and password to ensure it is appropriate. If the role is not correct, users will need to submit a new eGrants TEA SE access request form indicating the change in role. If a username and password were assigned to an individual who should no longer have access, please complete the eGrants TEA SE access form to delete system access for that individual.

A TEA SE username and password are required for each user of eGrants, including authorized officials such as superintendents and executive directors who submit grant applications, employees or contractors who will assist in writing/completing applications in eGrants, and grant personnel who will be completing project progress reports in eGrants. For each user, a single TEA SE username and password is valid for all eGrants applications and is not limited to any one specific grant. Privileges listed under a role apply to all grants and progress/results reports.

To request a username and password, go to http://ritter.tea.state.tx.us/forms/tease/egrants_ext.htm. Information on how to apply for eGrants access can be found at <http://ritter.tea.state.tx.us/opge/egrant/>.

As part of the TEA eGrants system, the Grant Writer Assignment (GWA) form has been introduced as a mechanism for identifying users who will have access to view and complete the Adult Ed and TANF grant applications. Due to the competitive nature of some grants, certain users will be designated to have access to a grant application by the superintendent or the organization's authorized official. Only the superintendent or the organization's authorized official may complete the form and must denote agreement with the authorization statement on the bottom of the form before the schedule is complete. In addition to the GWA form, the Applicant Designation and Certification (ADC) form must be submitted in order for designated individuals to gain access to the grant application. The ADC form indicates the maximum amount of funds for which an organization will apply based on the federal Adult Ed allocation table for the 2009-2010 school year. Applicants should complete only the federal Adult Ed grant section of the ADC and designate the other funding sources as "Not Applying" to minimize the sections of the grant not needed to submit the initial grant application. The state Adult Ed funds and TANF funds will be made available once the federal Adult Ed competitive review process has been completed. These funds are provided to those organizations awarded the federal Adult Ed grant. The information submitted on the form is considered to be binding. Only the users identified on the form will have access to the grant application.

Superintendents or organizations' authorized officials and eGrants TEA SE users can view the instructions for the form at http://maverick.tea.state.tx.us:8080/Guidelines/Template%20Forms/TEM-PAA05PP2220_I.pdf.

Description. The objectives of the 2009-2010 Adult Ed and TANF programs are to assist adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency; assist adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children; assist adults in the completion of a secondary school education; assist adults who have limited English proficiency with English language acquisition; and assist adults who are incarcerated in a correctional facility or other institution who function at less than a secondary completion level with basic academic and functional context skills.

Project Dates. The Adult Ed and TANF programs will be implemented during the 2009-2010 school year. Applicants should plan for a starting date of no earlier than July 1, 2009, and an ending date of no later than June 30, 2010.

Project Amount. Available funding is approximately \$32.7 million in federal Adult Ed funds with approximately \$12.7 million available in supplemental state Adult Ed and TANF funds. Each eligible organization can apply for only one project for the 2009-2010 school year. An eligible organization can also participate as a sub-recipient of an eligible organization applying for this grant.

Training Available on Texas Education Telecommunication Network (TETN). TEA is offering training via TETN (TETN Event #34865) on Wednesday, February 25, 2009, from 3:15 p.m. to 5:15 p.m. This training will cover the Adult Ed and TANF grant application and will provide the opportunity for questions and answers. As space is limited, individuals planning to attend the event must reserve seating with their regional education service center.

Further Information. For clarifying information about this notice or the Request for Application (RFA), contact Iris Adams, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. To assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>.

TRD-200900178

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: January 14, 2009



Request for Applications Concerning High Schools That Work Enhanced Design Network Grant, Cycle 3, Year 1

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-104 from public school districts and open-enrollment charter schools with a Stage 3 or Stage 4 intervention level for Career and Technical Education under the TEA Performance-Based Monitoring Analysis System. In addition, eligible school districts and open-enrollment charter schools are those that have one or more high school campuses that meet one of the following criteria. (1) In each of the past three school years (2005-2006, 2006-2007, and 2007-2008), at least 55 percent of students were identified as economically disadvantaged and, in school year 2007-2008 only, at least 45 percent of students were identified as being at risk of dropping out of school. (2) The campus was rated *Academically Unacceptable* in 2008 under the state accountability rating system. (3) The campus would have been rated *Academically Unacceptable* if the school leaver provision had not been in place in the 2008 state accountability rating system.

A school district may not apply for any campus that is a Disciplinary Alternative Education Program, a Juvenile Justice Alternative Education Program, or an Alternative Education Campus. In addition, a school district or open-enrollment charter school may not apply for any campus with any of the following grants that continue beyond July 1, 2009, the start date of this grant program: (1) High Schools That Work (HSTW) Enhanced Design Network, Cycle 1 and 2 Continuation; (2) Texas High School Redesign and Restructuring (whether

funded by TEA, the Communities Foundation of Texas, or the Bill and Melinda Gates Foundation); (3) Early College High School; (4) Texas Science, Technology, Engineering, and Math (T-STEM) Academy; or (5) T-STEM Special Project.

Description. The purpose of the High Schools That Work Enhanced Design Network Grant, Cycle 3, Year 1, is to support high schools in implementing the HSTW redesign model in partnership with the TEA and Southern Regional Education Board. The HSTW design includes a set of Key Practices that impact student achievement and provide direction and meaning to comprehensive school improvement and student learning. High schools that receive funding under this grant will be expected to implement the HSTW Key Practices.

Dates of Project. The High Schools That Work Enhanced Design Network Grant, Cycle 3, Year 1, will be implemented during the 2009-2010 and 2010-2011 school years. Applicants should plan for a starting date of no earlier than July 1, 2009, and an ending date of no later than February 28, 2011.

Project Amount. Funding will be provided for approximately 10 projects. Each project will receive a maximum of \$83,500 for the July 1, 2009, through February 28, 2011, project period.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. Due to the high cost of printing and mailing RFAs, they are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, March 19, 2009, to be eligible to be considered for funding.

TRD-200900179

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 14, 2009



Request for Applications Concerning the Vision 2020, Cycle 2

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-107 from high-need local education agencies that (1) serve at least 2,500 or 22 percent of children from families with incomes below the poverty line as identified by the 2005 U.S. Census data; and (2) serve one or more schools identified for improvement or corrective action under the No Child Left Behind Act of 2001, Title I, Part A, Section 1116, or have a substantial need for assistance in acquiring and using technology as reflected in the Texas Campus STaR Chart.

Description. The purpose of this RFA is to solicit grant applications from eligible applicants to implement programs that meet the intent of the No Child Left Behind Act of 2001, Title II, Part D, Enhancing Education Through Technology Act of 2001. Programs should address students who lack access to needed courses and be designed to improve students' literacy, academic, and technical skills, the latter of which is becoming increasingly important in our competitive global society. Students can benefit from the use of current technology tools, which enhance the learning process and accommodate different learning styles. Teachers will need to have access to high-quality, relevant, and ongoing professional development not only in the use of these technology tools but also in how to teach using those tools in a modern, interactive, and engaging learning environment. Programs should make systemic changes in the way teachers teach and students learn; create professional learning communities that enable members to share best practices, discuss challenges, and develop strategies for improving instruction using technology; and involve careful planning, supportive leadership, and data-driven decision making. Programs must involve all stakeholders in creating and sustaining professional learning communities.

The Vision 2020, Cycle 2, grant includes two separate strands: (1) Technology Immersion; and (2) Virtual Learning. School districts may apply for both strands but will only receive funding for one strand. Applicants must submit a separate application for each strand.

The purpose of the Technology Immersion strand is to provide high-need schools the opportunity to provide total technology immersion to an entire grade level on one or more campuses or on an entire campus with the necessary supplementary resources to provide (1) a wireless mobile computing device for each educator and student on an immersed campus to ensure on-demand technology access at school and at home; (2) productivity, communication, and presentation software for use as learning tools; (3) online instructional resources that support the state curriculum in English language arts, mathematics, science, and social studies; (4) online assessment tools to diagnose students' strengths and weaknesses or to assess mastery of the core curriculum; (5) professional development for teachers to help them integrate technology into teaching, learning, and the curriculum; and (6) initial and ongoing technical and pedagogical support.

The purpose of the Virtual Learning strand is to provide high-need schools with the necessary resources to provide supplementary online learning opportunities for students and/or teachers via the Texas Virtual School Network and the opportunity to (1) improve student academic achievement through the use of technology in elementary and secondary schools; (2) assist every student in crossing the digital divide by ensuring that every student is technology literate; and (3) encourage the

effective integration of technology resources and systems with teacher training and curriculum development to establish research-based instructional methods that can be widely implemented as best practices by state and local educational agencies.

Dates of Project. The Vision 2020, Cycle 2, grant will be implemented during the 2009 - 2010 and 2010 - 2011 school years. Applicants should plan for a starting date of no earlier than September 1, 2009, and an ending date of no later than June 30, 2011.

Project Amount. Funding will be provided for approximately 50 projects. Each project will receive a maximum of \$500,000 for the entire 2009 - 2010 and 2010 - 2011 project period. This project is funded 100 percent from federal funds under the No Child Left Behind Act of 2001, Title II, Part D, Subpart 1.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. Due to the high cost of printing and mailing RFAs, they are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, April 30, 2009, to be eligible to be considered for funding.

TRD-200900177

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 14, 2009



Education Service Center, Region XIV

Learn and Serve Texas Grant

Request for Applications (RFA) Concerning Learn and Serve Texas Grant Program

Filing Authority. This Request for Applications (RFA) is authorized under the National and Community Service Act of 1990, 42 USC 12521 et seq. (Learn and Serve America School-based Programs)

Eligible Applicants. The Texas Center for Service-Learning, a statewide initiative of Region 14 Education Service Center (ESC) in collaboration with the Texas Education Agency, is requesting applications from public school districts, open enrollment charter schools, and shared services arrangements (SSAs) of public school districts and education service centers in Texas. Applicants must have at least two partners, one of which must include a private nonprofit community-based organization or government agency that has demonstrated expertise in meeting educational, environmental, public safety, or health and human needs. (If such an organization or agency does not exist in the community, applicants may partner with a nonprofit, not-for-profit, religious, or community organization.) In addition, the community-based organization must have been in existence for at least one year before the start of the program and must make service opportunities available to student participants. Subgrantee programs may also include partnerships with private for-profit businesses, private nonprofit schools, institutions of higher education, government agencies, individuals, and other organizations.

Description. Learn and Serve America: School-Based program grants are designed to assist in developing high-quality service-learning programs in elementary and secondary schools. Learn and Serve America supports school-based programs, composed of Local Education Agencies (LEAs) and their community partners, that provide youth with opportunities to learn and develop their capabilities through service-learning. Service-learning is an educational method which engages young people in service to their communities as a means of developing a life-long ethic of service, enriching their academic learning, promoting personal growth, and helping them to develop the skills needed for productive citizenship. The goals of these grants are to fund programs that: (a) Encourage elementary and secondary school teachers to create, develop, and offer service-learning opportunities for all school-age youth; (b) Educate teachers about service-learning and incorporate service-learning opportunities into classrooms to enhance academic learning; (c) Coordinate the work of adult volunteers in school; (d) Introduce young people to a broad range of careers and expose them to further education and training; (e) Hire service-learning coordinators to assist with identifying community partners and implementing school-based service-learning programs; (f) Provide the technical assistance and information to facilitate the training of teachers who want to use service-learning in their classrooms; and (g) Assist local partnerships in the planning, development, and execution of service-learning projects.

The Learn and Serve Texas grant will continue to invest in programs that implement, expand, and sustain high-quality service-learning in Texas public school districts as part of a larger strategy to make service-learning a common experience for all Texas students. Subgrantees under this program are expected to: (1) Expand high-quality service-learning - a form of instruction in which students design projects to address community needs as part of their academic studies - into more K-12 schools, particularly those with large numbers of youth in disadvantaged circumstances, as a strategy to improve retention and graduation through increased civic and academic engagement; (2) Engage young people in service-learning activities that directly address community needs in order to build healthier communities; (3) Develop and maintain community partnerships that provide opportunities for student service-learning activities and student civic and academic engagement; (4) Engage young people in service-learning activities related to the Mar-

tin Luther King, Jr., national Day of Service (www.mlkday.gov) on the third Monday in January; (5) Increase civic and academic engagement of participating students as measured by pre- and post-surveys, attendance rates, discipline referrals, and promotion rates; (6) Increase the number and percentage of teachers who use service-learning to meet educational goals; (7) Improve the quality of service-learning through the LEADERS model of service-learning and the K-12 Standards for High-Quality Practice; (8) Sustain and institutionalize service-learning in participating districts through administrative leadership, supportive policies and practices, and integration with other educational programs and school reform initiatives; (9) Provide TxCSL with information about successful service-learning projects, programs, and initiatives for the purpose of project replication, adoption, and adaptation; (10) Ensure participation of program staff and partners (as appropriate) in all required trainings and meetings offered through TxCSL; and (11) Meet all evaluation and reporting requirements as specified in the RFA and/or by the program evaluator, TxCSL, Region 14 ESC, TEA, and CNCS.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. The starting date will be no earlier than September 1, 2009, with an ending date of no later than August 31, 2012. Programs will be eligible for two years of continuation funding based on evidence of satisfactory progress.

Project Amount. A range of contracts will be awarded from \$10,000 to \$110,000 based on student ADA. SSAa are allowable to a maximum of \$140,000. A total of \$1,020,000 is available for grant awards. Continuation funding will be based on satisfactory progress and on general budget approval by the Corporation for National and Community Service (CNCS), the Texas Education Agency, and Region 14 ESC. This project is funded 100% from CNCS federal funds. Applicants must provide matching funds for the grant at the rate of 1:1 in cash or in kind. Matching funds may come from any source, including federal funds, that does not specifically prohibit such use. Funds authorized by or through CNCS, however, may not be used as matching. Indirect costs may not be charged to this grant.

Selection Criteria. Subgrantees will be selected on the basis of total points awarded through a competitive grant review process in which applications receiving 70% or higher of the total points will be considered for funding. Additional factors will be considered prior to selection of the programs recommended for funding to ensure that programs meet the intent and purposes of the authorizing statute and guidance, are cost effective, may be replicable in districts with similar demographics, are diverse with respect to size of districts, are diverse with respect to geographic location in Texas, and demonstrate greatest need. Awards are contingent on the availability of federal funding for this program.

Region 14 ESC is not obligated to execute a resulting grant award, provide funds, or endorse any proposal submitted in response to this RFA. This RFA does not commit Region 14 ESC to pay any costs incurred before a NOGA is executed. The issuance of this RFA does not obligate Region 14 ESC to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by downloading the application from the Texas Center website at www.txcsl.org; by writing the Texas Center for Service-Learning, 6207 Sheridan Ave., Suite 310, Austin, TX 78723-1060; or by calling (512) 420-0214.

Further Information. For clarifying information about the RFA, contact the Texas Center for Service-Learning at (512) 420-0214. Opportunities for technical assistance will also be indicated in the RFA.

Deadline for Receipt of Proposals. Proposals must be received by mail or delivery service at the Texas Center for Service-Learning by 5:00 p.m. (Central Standard Time), Friday, March 27, 2009, to be considered. Facsimile and e-mail copies will not be accepted.

TRD-200900184

Ronnie Kincaid

Executive Director

Education Service Center, Region XIV

Filed: January 14, 2009

Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS"), in relation to a contract award for independent U.S. and Non-U.S. proxy research, vote advisory and related services. The contractor is Institutional Shareholder Services, Inc. ("ISS"), 2099 Gaither Road, Rockville, Maryland 20850. ISS will provide advice, assistance and customer service and support to ERS on all proxy voting services and related matters including proxy voting policies and ERS proxy voting reports, and independent securities litigation auditing and monitoring services, as requested by ERS. The cost of the contract is for \$110,204 per annum, payable in quarterly installments. The contract was executed on January 5, 2009 and the term of the contract is from January 1, 2009 through December 31, 2013.

TRD-200900144

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: January 13, 2009

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 23, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 23,**

2009. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Acme Brick Company; DOCKET NUMBER: 2008-1418-AIR-E; IDENTIFIER: RN100221993; LOCATION: Malakoff, Henderson County; TYPE OF FACILITY: brick manufacturing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §§122.143(4), 122.145(2)(B) and (C), and 122.146(2), Federal Operating Permit (FOP) Number O-01784, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to timely submit an annual compliance certification (ACC) and semi-annual deviation reports; PENALTY: \$3,850; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Avalon Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2008-1716-MWD-E; IDENTIFIER: RN101511863; LOCATION: Avalon, Ellis County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013981001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for five-day biochemical oxygen demand, pH, total suspended solids (TSS), and flow; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013981001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: \$9,950; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Bosqueville Green Acres Water Supply Corporation; DOCKET NUMBER: 2008-1532-PWS-E; IDENTIFIER: RN101217008; LOCATION: McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i), TCEQ Agreed Order Docket Number 2005-0480-PWS-E, Ordering Provision 2.a., and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.42(1), by failing to compile a thorough plant operations manual and keep it up-to-date for operator review and reference; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter; and 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility at all times under the direct supervision of a water works operator who holds a Class "D" or higher license; PENALTY: \$1,474; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Denny Oil Company dba North Street Texaco; DOCKET NUMBER: 2008-1266-MLM-E; IDENTIFIER: RN102381845; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(a)(1) and the Code, §26.121(a) and §26.3475(c)(2), by failing to prevent a spill from an underground storage tank (UST) system; 30 TAC §334.51(a)(3) and the Code, §26.3475(c)(2), by failing to ensure that a fuel transfer operation is continuously monitored by the person conducting the transfer during the entire time that regulated substances are being transferred into a UST system; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to assure that spill and overfill prevention equipment are maintained in good operating condition; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-1315-IWD-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: organic and inorganic chemical manufacturing plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0000475000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for carbonaceous biochemical oxygen demand and pH; PENALTY: \$16,275; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Enstor Katy Storage and Transportation, L.P.; DOCKET NUMBER: 2008-1484-AIR-E; IDENTIFIER: RN102543816; LOCATION: Katy, Fort Bend County; TYPE OF FACILITY: natural gas storage and transportation; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(C), and 122.146(2), Permit Number O-00518, GTC, and THSC, §382.085(b), by failing to submit the ACC and a semi-annual deviation report; PENALTY: \$3,850; Supplemental Environmental Project (SEP) offset amount of \$1,540 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Hempstead; DOCKET NUMBER: 2008-0999-MWD-E; IDENTIFIER: RN101920692; LOCATION: Waller County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010948001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS, ammonia nitrogen, and flow; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010948001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports; PENALTY: \$7,600; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: JO PO AND ASSOCIATES, INC. dba Sunwest Grocery Citgo; DOCKET NUMBER: 2008-1208-PST-E; IDENTIFIER: RN101556256; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.49(b)(3)(B) and the Code, §26.3475(d), by failing to maintain the interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances, and inspect and test the protected component for electrical isolation; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that the UST is monitored in a manner which will detect a release; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the

fill tube or to a nonremovable point in the immediate area of the fill tube; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and 30 TAC §115.221(1) and THSC, §382.085(b), by failing to ensure that the gasoline container is equipped with a submerged fill pipe; PENALTY: \$18,900; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Linde Gas North America LLC; DOCKET NUMBER: 2008-1455-AIR-E; IDENTIFIER: RN100217207; LOCATION: La Porte, Harris County; TYPE OF FACILITY: synthetic gas production plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-02290, GTC, and THSC, §382.085(b), by failing to submit an annual permit compliance certification; PENALTY: \$3,875; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Mullin Independent School District; DOCKET NUMBER: 2008-1711-PWS-E; IDENTIFIER: RN101256550; LOCATION: Mullin, Mills County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to obtain authorization prior to placing a well into service; 30 TAC §290.41(c)(3)(K), by failing to properly install the well casing vent on well number two with an opening that is covered with a 16-mesh or finer corrosion resistant screen; 30 TAC §29.46(f)(2), by failing to provide operating records at the time of the investigation; 30 TAC §290.46(s)(1), by failing to calibrate the meter on well number two at least once every three years; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: \$552; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Hermenegildo Bueno dba Paisano Truck Stop; DOCKET NUMBER: 2008-1467-AIR-E; IDENTIFIER: RN100809995; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum Reid vapor pressure (RVP) requirement of seven pounds per square inch absolute (psia); PENALTY: \$1,260; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(12) COMPANY: Raytheon Company; DOCKET NUMBER: 2008-1431-AIR-E; IDENTIFIER: RN102207073; LOCATION: Richardson, Dallas County; TYPE OF FACILITY: lens manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to operation of a lens manufacturing plant; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Southwest Convenience Stores, LLC; DOCKET NUMBER: 2008-1662-AIR-E; IDENTIFIER: RN102395662 and RN102017241; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience stores with sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the seven psia maximum RVP requirement for gasoline; PENALTY: \$3,587; ENFORCEMENT COORDINATOR: Nadia

Hameed, (713) 767-3500; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(14) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2008-1282-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and (15) and §122.165(a)(7), FOP Numbers O-01930, O-01932, O-01934, and O-02191, GTC, and THSC, §382.085(b), by failing to ensure that a responsible official certified the accuracy and completeness of the semi-annual deviation report; 30 TAC §122.143(4), FOP Number O-02191, GTC, New Source Review Permit Number 22048, General Condition Number 9, and THSC, §382.085(b), by failing to maintain the thermal oxidizer; and 30 TAC §122.143(4) and (15) and §122.165(a)(7) and (8), FOP Numbers O-01931 and O-01933, GTC, and THSC, §382.085(b), by failing to ensure that a responsible official certified the accuracy and completeness of the ACC; PENALTY: \$20,410; SEP offset amount of \$10,205 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Toll Brothers, Inc.; DOCKET NUMBER: 2008-1452-WQ-E; IDENTIFIER: RN104981212 and RN104976857; LOCATION: Lakeway, Travis County; TYPE OF FACILITY: residential construction sites; RULE VIOLATED: 30 TAC §281.25(a)(4), Construction General Permit Numbers TXR15BX03 and TXR15BT64, Part III Section F(2)(a)(ii), and the Code, §26.121, by failing to maintain erosion control measures; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-200900149

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 13, 2009



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 13, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Build-

ing A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 13, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Guss Lines dba Lines Cactus Grove Mobile Home Park; DOCKET NUMBER: 2008-1164-PWS-E; TCEQ ID NUMBER: RN104103247; LOCATION: 2408 West Highway 90, Alpine, Brewster County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b), §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; PENALTY: \$1,191; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Shane Walls; DOCKET NUMBER: 2007-1743-LII-E; TCEQ ID NUMBER: RN105239586; LOCATION: 12750 Preston Road, Building E-1, Frisco, Collin County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, 30 TAC §30.5(b) and §344.4(a), by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required, when not possessing a current license or registration; and Texas Occupations Code, §1903.251 and 30 TAC §344.58(b), by failing to comply with irrigator installer requirements by unauthorized use of the license of someone else who is a licensed irrigator; PENALTY: \$400; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200900174

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 14, 2009



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the

30th day before the date on which the public comment period closes, which in this case is **February 13, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 13, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Fairmont Cleaners, Inc. dba Fairmont Cleaners; DOCKET NUMBER: 2006-1316-DCL-E; TCEQ ID NUMBER: RN104086384; LOCATION: 4850 Fairmont Parkway, Pasadena, Harris County; TYPE OF FACILITY: dry cleaners drop station; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required dry cleaners drop station registration form to the TCEQ for the facility; PENALTY: \$1,185; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Kenneth Poppe and Gloria Poppe dba Poppe's Pub & Grub; DOCKET NUMBER: 2008-0553-PWS-E; TCEQ ID NUMBER: RN105452650; LOCATION: 13176 Farm-to-Market Road 236, Victoria, Victoria County; TYPE OF FACILITY: restaurant with a public water supply; RULES VIOLATED: 30 TAC §290.39(m), by failing to provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system; and 30 TAC §290.42(b)(1) and (e), by failing to provide disinfection facilities for all groundwater supplies for the purpose of microbiological control and distribution protection; PENALTY: \$850; STAFF ATTORNEY: Rebecca Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: Nam Sun Paek dba Metro Cleaners; DOCKET NUMBER: 2008-1232-DCL-E; TCEQ ID NUMBER: RN103955506; LOCATION: 101 East Harwood Road, Suite 100, Hurst, Tarrant County; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e), TWC, §7.051(a)(1)(B), THSC, §374.102(e), and TCEQ Default Order Docket Number 2006-0855-DCL-E, Ordering Provision Number 2.a, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c), TWC, §5.702, and TCEQ Default Order Docket Number 2006-0855-DCL-E, Ordering Provision Numbers 1 and 2.b, by failing to pay outstanding dry cleaner fees, administrative penalties, and associated late fees for TCEQ Financial Account numbers 23800079, 24000029, and 24000463; PENALTY: \$2,006; STAFF ATTORNEY:

Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Triumph Christian Center Inc.; DOCKET NUMBER: 2006-1792-PWS-E; TCEQ ID NUMBER: RN101251866; LOCATION: 6601 Farm-to-Market Road 762, Richmond, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to perform routine bacteriological monitoring of the public water supply and by failing to provide public notification of the failure to perform routine bacteriological monitoring of the public water supply for the months of August 2005 - January 2006 and April and May 2006; PENALTY: \$2,800; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200900173

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 14, 2009



Notice of Water Quality Applications

The following notices were issued during the period of December 17, 2008 through January 13, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 24 has applied for a renewal of TPDES Permit No. WQ0014440001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 1,800 feet south of the intersection of County Road 144 and County Road 281, off County Road 144 and west of the Atchison, Topeka & Santa Fe Railroad in Brazoria County, Texas.

CITY OF CRANFILLS GAP has applied for a renewal of TPDES Permit No. WQ0014169001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 900 feet southeast of the intersection of State Highway 22 and Farm-to-Market Road 219 (3rd Street) in Bosque County, Texas.

CITY OF HILLSBORO has applied for a renewal of TPDES Permit No. WQ0010630001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,810,000 gallons per day. The facility is located adjacent to George Street, approximately 700 feet southwest of the intersection of Parham Street and George Street in Hill County, Texas.

CITY OF SOMERVILLE has applied for a renewal of TPDES Permit No. WQ0010371001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located adjacent to Farm-to-Market Road 1361, approximately 0.5 mile northeast of the intersection of Farm-to-Market Road 1361 and State Highway 36, east of the City of Somerville in Burleson County, Texas.

CITY OF TEAGUE AND CITY OF FAIRFIELD has applied for a renewal of TPDES Permit No. WQ0013579001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 3.4 miles southwest of the intersection of U.S. Highway 84 and Interstate Highway 45 and approximately 1.1 miles south of the intersection of U.S. Highway 84 and Boyd Prison Road in Freestone County, Texas.

HABC LTD has applied for a minor amendment to TCEQ Permit No. WQ0014587001, to revise the permitted drip irrigation field area to reflect areas identified in the Settlement Agreement between Headwaters Development and Save Our Springs Association (SOS). The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 325,000 gallons per day via a subsurface drip irrigation system on a public accessible 12-acre wildflower meadow and drip irrigation system on a public accessible 63-acre area of natural habitat. The facility and disposal site will be located approximately 3 miles northeast of the intersection of Rural Route 12 and U.S. Highway 290 in Dripping Springs, Texas and approximately 1.8 miles due north of US Highway 290 in Hays County, Texas.

HJ TRAILS END LTD has applied for a new permit, Proposed Permit No. WQ0014863001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 78,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 18.71 acres. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 78,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 18.60 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 0.77 mile south of the intersection of Johnson Road and Trails End Road in the extra-territorial jurisdiction of the City of Austin and the extra-territorial jurisdiction of the City of Cedar Park in Travis County, Texas.

KT MINING INC. which operates the Calvert Mine, has applied for a major amendment to TPDES Permit No. WQ0002881000 to authorize the removal of Outfall 009 and to add Outfalls 018, 019, and 020 for the discharge of wastewater from the active mine area, and Outfalls 118, 119, and 120 for the discharge of wastewater from the post mining area. The current permit authorizes the discharge of wastewater from the active mining area and previously monitored effluents (treated domestic wastewater from Outfall 201 and treated oily wastewater from Outfall 301) on an intermittent and flow variable basis via Outfall 001; the discharge of wastewater from the post mining area and previously monitored effluent on an intermittent and flow variable basis via Outfall 101; the discharge of wastewater from the active mining area on an intermittent and flow variable basis via Outfalls 004, 008, 010, 013, 015, and 016; the discharge of wastewater from the post mining area on an intermittent and flow variable basis via Outfalls 104, 108, 110, 113, 114, 115, and 116; the discharge of groundwater at a volume not exceed 14,400,000 gallons during any 24-hour period via Outfall 011; the discharge of ground water at a volume not exceed 4,320,000 gallons during any 24-hour period via Outfalls 012 and 017; and the discharge of wastewater from a treatment pond (mine pit water and storm water) on an intermittent and flow variable basis via Outfall 009. The facility is located between State Highway 6 and State Highway 46 on Tidwell Prairie Road, approximately 4.5 miles southeast of the City of Bremond, Robertson County, Texas.

MIRANDO CITY WATER SUPPLY CORPORATION has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0014207001 to authorize the addition of an interim phase to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 68,000 gallons per day and to authorize a change in treatment process to include individual septic

tanks in lieu of a facultative lagoon. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located due south of the Tex-Mex Railroad and 3,000 feet due west of the intersection of State Highway 359 and Farm-to-Market Road 2895 in Webb County, Texas.

PEASTER INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013589001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day. The facility is located at 8512 Farm-to-Market Road 920 approximately 1,200 feet southeast of the intersection of Farm-to-Market Road 920 and Harwell Lake Road in Parker County, Texas.

RICHEY ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012378002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 1820 Candle Park Ridge, approximately 3,300 feet northeast of the intersection of Hardy Toll Road and W.W. Thorne Drive, and 3 miles south-southwest of the City of Westfield in Harris County, Texas.

SHERWYN DALLAS WOOD has applied for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004843000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 990 head of which all are milking cows. The facility is located on the south side of Farm-to-Market Road 913, approximately 2.5 miles south of the intersection of Farm-to-Market Road 913 and U.S. Highway 67, said intersection is located approximately 7 miles south of the intersection of U.S. Highway 281 and U.S. Highway 67 in Stephenville in Erath County, Texas.

THE CITY OF LEANDER has applied for a renewal of TPDES Permit No. WQ0012644001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day. The facility is located at 10201 Ranch-to-Market Road 2243, approximately 4,000 feet east of the intersection of U.S. Highway 183 and Ranch-to-Market Road 2243 in Williamson County, Texas.

THE CITY OF WAELDER has applied for a renewal of TPDES Permit No. WQ0014252001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 605 South H Street, on the north bank of Baldrige Creek in the southeast portion of the City of Waelder approximately 0.71 mile southeast of the intersection of U. S. Highway 90 and State Highway 97 in Gonzales County, Texas.

THE SALVATION ARMY has applied for a renewal of TPDES Permit No. WQ0013904001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located on the southern portion of Camp Hoblitzelle, approximately 1.5 miles south of the intersection of Farm-to-Market Road 875 and Farm-to-Market Road 663, south of the Town of Midlothian in Ellis County, Texas.

UNITED STATES DEPARTMENT OF THE ARMY has applied for a renewal of TPDES Permit No. WQ0012096001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located one mile east of Avenue F, south of 16th Street, at North Fort Hood in Coryell County, Texas.

WHARTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2 has applied for a renewal of TPDES Permit No. WQ0014019001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately one mile east of the inter-

section of U.S. Highway 90A and State Highway 60, 200 feet west of a braided portion of the San Bernard River in Wharton County, Texas.

WELLBORN SPECIAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0013850001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. TCEQ received this application on October 20, 2008. The facility is located 4,500 feet southwest of Farm-to-Market Road 2154 on Koppe Bridge Road and approximately 1 mile south of Wellborn in Brazos County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200900180

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 14, 2009

Texas Facilities Commission

Request for Proposals #303-9-10711

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-9-10711. TFC seeks a five (5) year lease of approximately 7,000 square feet of warehouse space in Beaumont, Texas.

The deadline for questions is January 30, 2009, and the deadline for proposals is February 9, 2009, at 3:00 p.m. The award date is March 19, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=80553.

TRD-200900172

Kay Molina

General Counsel

Texas Facilities Commission

Filed: January 13, 2009

Texas Forensic Science Commission

Invitation for Offers

In accordance with the provisions of Texas Government Code, Chapter 2254, the Texas Forensic Science Commission and Sam Houston State University will be seeking Invitation for Offers to hire a consultant to deliver an expert review of the Brandon Lee Moon case, a Texas case sexual assault case involving probable negligent serological testing and DNA methodologies which will include but not be limited to the following:

1. The consultant is required to have expertise in serological testing and DNA testing methodologies as well court room testimony experience. This expertise and experience must include that of ABO blood group

and secretor status testing and the interpretation of DNA typing results from multiple analysis modalities, including RFLP, DQ-alpha and STR analysis.

2. A review of the education, hiring, training and supervision records of the serology analyst who conducted the initial testing of the evidentiary material and known reference samples from this sexual assault case. The expert will be required to deliver an opinion as to whether the serologist conducting the analysis of the evidentiary material had the necessary expertise, training and supervision to conduct the appropriate analysis.

3. A review of the analysis, interpretation and testimony of the serological evidence in the 1987 and 1988 rape prosecution of Brandon Lee Moon. The expert will be required to deliver an opinion as to whether any of the serological testing conducted was flawed and whether the testimony provided was incorrect or misleading, providing potential to inappropriately bias the jury. The expert will also be required to deliver an opinion on whether the analysis and/or testimony of the serologist conducting the testing constituted negligence or misconduct.

4. An opinion as to whether the appropriate controls or supervision of the serological testing procedures were in place to identify any potential errors in the analysis or subsequent testimony.

5. A review of the RFLP testing performed by Lifecodes and any reports issued which suggested that Mr. Moon could not have been the source of the evidence in this case.

6. A review of subsequent serological testing in 1996, suggesting potential errors committed in the original testing.

7. Examination of any documentation as to the request for additional testing and collection of new samples and the basis for further delays.

The President of Sam Houston State University has made a finding of fact that the consulting services are necessary. Sam Houston State University does not currently have in house expertise to complete this project. The Commission believes that for purposes of the investigation the Brandon Lee Moon investigation must be conducted as an independent review.

The purpose of this engagement is to investigate the interpretation of the forensic evidence in the Brandon Lee Moon case, provide an opinion of the interpretations, and advise the Commission in the development of recommendations to the resolve any forensic negligence that may have occurred.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University. As authorized by law, the University reserves the right to reject any and all bids. As authorized by law, the University reserves the right to select the bidder that, in its judgment, provides the best value.

Parties interested in the Invitation for Offers and evaluation criteria should contact:

Leigh M. Tomlin

Sam Houston State University

College of Criminal Justice

Texas Forensic Science Commission

Box 2296

816 17th Street

Huntsville, Texas 77341

Phone: 1-888-296-4232

Fax: 1-888-305-2432

Email: info@fsc.state.tx.us

The proposal submission deadline will be Monday, February 23, 2009, at 5 p.m. Central Prevailing Time.

TRD-200900150

Fernando Gomez

General Counsel, Texas State University System

Texas Forensic Science Commission

Filed: January 13, 2009

Golden Crescent Workforce Development Board

Public Notice

The Golden Crescent Workforce Development Board (Board) will release its Request for Bids for Fiscal Monitor on January 19, 2009.

The Board is responsible for administering the workforce development system, including job training, employment, and employment-related educational programs in Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca and Victoria counties.

A complete set of specifications may be obtained by calling (361) 576-5872. Interested parties must provide a written response no later than 5:00 p.m. February 13, 2009.

Evaluation of Bids: February 16 - 20, 2009.

Negotiations: February 24, 2009.

Contract dates will be: March 1, 2009 - August 31, 2009.

Note: Historically Underutilized Businesses to be awarded 5 bonus points. HUB Certificate must be attached as part of the bid submission.

TRD-200900064

Henry Guajardo

Executive Director

Golden Crescent Workforce Development Board

Filed: January 7, 2009

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rate

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for Texas Health Steps (THSteps) Behavioral Health Personal Care Services (PCS) associated with medical policy changes. Behavioral Health PCS are new benefits provided to children with a behavioral health/mental retardation (BH/MR) diagnosis and physical conditions with a BH/MR diagnosis. Services delivered to Medicaid clients under age 21 under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program are referred to as THSteps services in Texas. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.082 and 1 Texas Administrative Code (TAC), §355.201(e) - (f), which require public hearings on proposed Medicaid reimbursements.

Proposal. The new payment rates for THSteps Behavioral Health PCS are proposed to be effective April 1, 2009.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8441(12)(B), which addresses the reimbursement methodologies for PCS under the EPSDT Program.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Josie.Wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to Josie.Wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200900145

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rate

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m. to receive public comment on the proposed multiple Medicaid payment rates for Texas Health Steps (THSteps) Diagnostic Dental Services associated with medical policy changes. Services delivered to Medicaid clients under age 21 under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program are referred to as THSteps services in Texas. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.082 and 1 Texas Administrative Code (TAC), §355.201(e) - (f), which require public hearings on proposed Medicaid reimbursements.

Proposal. The new payment rates for THSteps Diagnostic Dental Services are proposed to be effective April 1, 2009.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8441(11), which addresses the reimbursement methodology for dental services under the EPSDT Program.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Josie.Wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5 p.m. the day of the hearing. Written comments may

be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to Josie.Wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200900146

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rate

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m. to receive public comment on the multiple proposed updated Medicaid payment rates resulting from Quarterly Medicaid Fee Reviews. The procedure codes covered by the Quarterly Medicaid Fee Reviews include multiple Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) codes; multiple surgery and medical services procedure codes with total components, professional components, and technical components; multiple non-clinical laboratory procedure codes; physician-administered drugs/biologicals; and clinical laboratory procedure codes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.082 and 1 Texas Administrative Code (TAC), §355.201(e) - (f), which require public hearings on proposed Medicaid reimbursements.

Proposal. The proposed updated payment rates resulting from the Quarterly Medicaid Fee Reviews are proposed to be effective April 1, 2009.

Methodology and justification. The proposed updated payment rates are calculated in accordance with 1 TAC §355.8021, which addresses the reimbursement methodology for DMEPOS; 1 TAC §355.8085, which addresses the reimbursement methodology for physician services, including surgery, medical services, and physician-administered drugs/biologicals; 1 TAC §355.8081, which addresses the reimbursement methodology for non-clinical laboratory services; and 1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory services.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Josie.Wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to Josie.Wheatfall@hhsc.state.tx.us. In addition, written comments may

be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200900148

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rate

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m. to receive public comment regarding the proposed Medicaid payment rates for Doctor of Dentistry Services as a Limited Physician associated with medical policy changes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.082 and 1 Texas Administrative Code (TAC), §355.201(e) - (f), which require public hearings on proposed Medicaid reimbursements.

Proposal. The new payment rates for Doctor of Dentistry Services as a Limited Physician are proposed to be effective April 1, 2009.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physician services, including Doctor of Dentistry Services.

Briefing Package. A briefing package describing the proposed payment rate will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Josie.Wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to Josie.Wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200900151

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rate

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m. to receive public comment on the proposed Medicaid Telemedicine Facility Fees for the patient site associated with medical policy changes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.082 and 1 Texas Administrative Code (TAC), §355.201(e) - (f), which require public hearings on proposed Medicaid reimbursements.

Proposal. The new Telemedicine Facility Fees for the patient site is proposed to be effective April 1, 2009.

Methodology and Justification. The proposed payment rate is calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physician services.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Josie.Wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to Josie.Wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200900157

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for seat lifts for use with furniture and power leg and seat elevation systems associated with Home Health Mobility Aids medical policy changes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates for these new Home Health Mobility Aids benefits are proposed to be effective April 1, 2009.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8021(c), which addresses

the reimbursement methodology for durable medical equipment (DME) as home health services, and 1 TAC §355.8441(3), relating to the reimbursement methodology for DME under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at josie.wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to josie.wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200900147

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for electric patient lifts associated with Home Health Mobility Aids medical policy changes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rate for the seat lifts are proposed to be effective April 1, 2009.

Methodology and Justification. The proposed payment rate was calculated in accordance with 1 TAC §355.8021(c), which addresses the reimbursement methodology for durable medical equipment (DME) as home health services, and 1 TAC §355.8441(3), relating to the reimbursement methodology for DME under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at josie.wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to josie.wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200900155

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2009, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for 2009 Healthcare Common Procedure Coding System (HCPCS) annual benefit additions. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The multiple procedure codes covered by the 2009 HCPCS annual benefit additions include Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) codes; medical, surgery, assistant surgery and anesthesia services delivered by physicians and certain other practitioners procedure codes; laboratory procedure codes; radiation treatment services, including total component, professional component, and technical component procedure codes; physician-administered drugs/biologicals procedure codes; clinical laboratory procedure codes; and ambulatory surgical center (ASC) procedure codes. The proposed payment rates for 2009 HCPCS annual benefit additions are proposed to be effective January 1, 2009.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8021, which addresses the reimbursement methodology for DMEPOS; 1 TAC §355.8085, which addresses the reimbursement methodology for physician services, including medical service, surgery, assistant surgery, anesthesia and physician-administered drugs/biologicals; 1 TAC §355.8081, which addresses the reimbursement methodology for non-clinical laboratory services and radiation treatment services; 1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory services; and 1 TAC §355.8121, which addresses the reimbursement methodology for ASCs.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 2, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at

(512) 491-1998; or by e-mail at josie.wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to josie.wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance so appropriate arrangements can be made.

TRD-200900156

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2009

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of BEN-E-LECT, a foreign third party administrator. The home office is VISALIA, CALIFORNIA.

Application of U.S. IMAGING NETWORK, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200900181

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 14, 2009

Texas Judicial Council

Request for Applications - FY2010 Discretionary Grant Program

Task Force on Indigent Defense

Visit website at www.courts.state.tx.us/tfid for more information.

Contact: Whitney Stark, Grants Administrator

Phone: (512) 936-6996

TRD-200900101

James Bethke

Director, Task Force on Indigent Defense

Texas Judicial Council

Filed: January 12, 2009

Texas Lottery Commission

Instant Game Number 1171 "Fiesta"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1171 is "FIESTA". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1171 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1171.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, PIÑATA SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1171 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
PIÑATA SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1171), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1171-0000001-001.

K. Pack - A pack of "FIESTA" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIESTA" Instant Game No. 1171 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIESTA" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "PIÑATA" play symbol, the player wins DOUBLE the PRIZE shown for that symbol! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "PIÑATA" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIESTA" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A

claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIESTA" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIESTA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FIESTA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FIESTA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1171. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1171 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	566,400	12.50
\$4	651,360	10.87
\$5	84,960	83.33
\$10	99,120	71.43
\$20	42,480	166.67
\$50	52,687	134.38
\$100	3,658	1,935.48
\$1,000	40	177,000.00
\$20,000	8	885,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1171 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1171, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200900102

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 12, 2009



Instant Game Number 1172 "Super Wild 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1172 is "SUPER WILD 8'S". The play style for this game is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1172 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1172.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 8 SYMBOL, \$5.00, \$8.00, \$10.00, \$15.00, \$18.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$50,000, 1X SYMBOL, 2X SYMBOL, and 4X SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1172 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
39	TRNI
40	FRTY
8 SYMBOL	WINX8
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$15.00	FIFTN
\$18.00	EGHTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY

\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$8.00, \$10.00, \$18.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1172), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1172-0000001-001.

K. Pack - A pack of "SUPER WILD 8'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER WILD 8'S" Instant Game No. 1172 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER WILD 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 53 (fifty-three) Play Symbols. In Game 1, if the player reveals 2 matching numbers within a PLAY, the player wins the PRIZE shown for that play. If a player reveals an "8" symbol within a PLAY, the player wins 8 TIMES the PRIZE shown for that play! In Game 2, if the player reveals 3 "8" symbols in a row, column or diagonal, the player wins PRIZE shown in PRIZE BOX. The player scratches the BONUS BOX for a chance to win up to 4 TIMES the prize won. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 53 (fifty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 53 (fifty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 53 (fifty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 53 (fifty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will never be the same as the winning prize symbol(s).

C. The top prize symbol will appear on every ticket unless otherwise restricted.

D. GAME 1: The "8" (win x 8) play symbol will only appear as dictated by the prize structure.

E. GAME 1: No more than three matching non-winning prize symbols will appear in this game.

F. GAME 1: No duplicate non-winning play symbols in this game.

G. GAME 1: No duplicate non-winning PLAYS in any order in this game.

H. GAME 1: The \$8 and \$18 prize symbols will only appear on winning PLAYS as dictated by the prize structure.

I. GAME 2: There will be no occurrence of three or more matching play symbols on a ticket, with the exception of the "8" play symbol in this game.

J. GAME 2: There will be at least three "8" play symbols in this game.

K. GAME 2: There will only be one occurrence of three "8"s in a row, column or diagonal line on winning tickets in this game.

L. GAME 2: The BONUS BOX play symbols of "2X" (win x 2) and "4X" (win x 4) will appear on winning tickets only as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER WILD 8'S" Instant Game prize of \$5.00, \$8.00, \$10.00, \$18.00, \$20.00, \$40.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$40.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery.

If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER WILD 8'S" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER WILD 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SUPER WILD 8'S" Instant Game, the Texas Lottery shall deliver to an

adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SUPER WILD 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1172. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1172 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	472,000	15.00
\$8	566,400	12.50
\$10	377,600	18.75
\$18	141,600	50.00
\$20	165,200	42.86
\$40	94,400	75.00
\$100	22,597	313.32
\$500	1,475	4,800.00
\$1,000	295	24,000.00
\$5,000	26	272,307.69
\$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1172 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1172, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200900089
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 9, 2009



Instant Game Number 1181 "Lucky Dog Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1181 is "LUCKY DOG DOUBLER". The play style for this game is "row/column/diagonal with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1181 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1181.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: PAW SYMBOL, DOG SYMBOL, DOG HOUSE SYMBOL, DOG COLLAR SYMBOL, BONE SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1181 - 1.2D

PLAY SYMBOL	CAPTION
PAW SYMBOL	
DOG SYMBOL	
DOG HOUSE SYMBOL	
DOG COLLAR SYMBOL	
BONE SYMBOL	
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1181), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1181-0000001-001.

K. Pack - A pack of "LUCKY DOG DOUBLER" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY DOG DOUBLER" Instant Game No. 1181 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY DOG DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals three matching symbols in any one row, column or diagonal, the player wins the PRIZE shown. If the

player reveals three (3) "PAW" play symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be only one occurrence of three "PAW" (doubler) play symbols appearing in a row, column or diagonal on winning tickets as dictated by the prize structure.

C. There will be only one occurrence of three matching play symbols other than the "PAW" (doubler) appearing in a row, column or diagonal on winning tickets as dictated by the prize structure.

D. Every ticket will contain at least two "PAW" (doubler) play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY DOG DOUBLER" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$40.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY DOG DOUBLER" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY DOG DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LUCKY DOG DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LUCKY DOG DOUBLER" Instant Game,

the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1181. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1181 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	790,400	11.54
\$2	912,000	10.00
\$4	182,400	50.00
\$5	60,800	150.00
\$10	60,800	150.00
\$20	30,400	300.00
\$40	3,800	2,400.00
\$50	1,900	4,800.00
\$100	1,520	6,000.00
\$500	190	48,000.00
\$1,000	114	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1181 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1181, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200900103

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 12, 2009



Instant Game Number 1182 "Five Star Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1182 is "FIVE STAR CASH". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1182 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1182.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DOUBLE DOLLAR SYMBOL, DOLLAR BILL SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$2,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1182 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
DOUBLE DOLLAR SYMBOL	\$\$
DOLLAR BILL SYMBOL	WINALL
\$5	FIVE\$
\$10	TEN\$
\$15	FIFTN
\$20	TWENTY

\$50	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1182), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1182-0000001-001.

K. Pack - A pack of "FIVE STAR CASH" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIVE STAR CASH" Instant Game No. 1182 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIVE STAR CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "DOUBLE DOLLAR" play symbol, the player wins the PRIZE shown for that symbol instantly. If the player reveals a "DOLLAR BILL" play symbol, the player wins ALL 20 PRIZES instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "DOLLAR BILL" (win all) play symbols will only appear on intended winning tickets and only as dictated by the prize structure.

C. The "\$\$" (auto win) play symbol will never appear more than once on a ticket.

D. No four or more matching non-winning prize symbols on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. When the "DOLLAR BILL" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching any WINNING NUMBER play symbol.

I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

J. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIVE STAR CASH" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$25.00, \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIVE STAR CASH" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIVE STAR CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FIVE STAR CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FIVE STAR CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature

appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1182. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1182 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	326,400	12.50
\$10	462,400	8.82
\$15	54,400	75.00
\$20	68,000	60.00
\$25	62,696	65.08
\$50	54,400	75.00
\$100	2,720	1,500.00
\$200	1,700	2,400.00
\$2,000	170	24,000.00
\$50,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.95. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1182 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1182, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200900104

Kimberly L. Kiplin
General Counsel

Texas Lottery Commission

Filed: January 12, 2009



Instant Game Number 1183 "Money Tree"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1183 is "MONEY TREE". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1183 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1183.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, DOLLAR BILL SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1183 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
DOLLAR BILL SYMBOL	WINALL
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1183), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1183-0000001-001.

K. Pack - A pack of "MONEY TREE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY TREE" Instant Game No. 1183 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONEY TREE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "DOLLAR BILL" play symbol, the player wins ALL 10 PRIZES instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "DOLLAR BILL" (win all) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. When the "DOLLAR BILL" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching to either WINNING NUMBER play symbol.

D. No more than two (2) matching non-winning prize symbols will appear on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY TREE" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY TREE" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY TREE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONEY TREE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONEY TREE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1183. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1183 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	707,520	11.36
\$4	804,000	10.00
\$5	96,480	83.33
\$10	112,560	71.43
\$20	64,320	125.00
\$50	43,550	184.62
\$100	4,221	1,904.76
\$1,000	164	49,024.39
\$20,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.39. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1183 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1183, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200900105

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 12, 2009

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 5, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36554 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the city limits of Coahoma and Reno, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36554.

TRD-200900092

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 9, 2009

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 9, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36576 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City of Elgin, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36576.

TRD-200900164

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2009



Notice of Application for Approval of Special Amortization and Adoption of Depreciation Rate for New Class of Property

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 5, 2009, for approval of a special amortization, from January 1, 2008 through March 31, 2011, for digital electronic switch equipment and circuit equipment - digital subscriber carrier equipment. Further, the application seeks adoption of a previously-approved depreciation rate, effective January 1, 2009, pursuant to §52.252 and §53.056, of the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED (Vernon 2007 & Supplemental 2008) (PURA). A summary of the application follows.

Docket Title and Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains) for Approval of a Special Amortization and Adoption of Depreciation Rate for New Class of Property Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 36552.

The Application: Mid-Plains requested approval of a special amortization over a 39-month period, from January 1, 2008 to March 31, 2011, for Account Number 2212.000 - Digital Electronic Switch and for Account Number 2232.500 - Circuit Equipment - Subscriber Carrier. Mid-Plains stated that due to advances in new technologies and the need to meet demand for anticipated, expanded, and enhanced broadband services, it will be necessary to replace the equipment sooner than anticipated. In addition, Mid-Plains requested adoption of an 8.33% depreciation rate for a new class of property, soft switch equipment, effective January 1, 2009. The depreciation rate and parameters used to determine the rate will be similar to that expected by Mid-Plains and was previously approved by the commission in *Application of Wes-Tex Telephone Cooperative, Inc. for Approval of Depreciation Rate Increase Pursuant to P.U.C. Substantive Rule §26.206*, Docket Number 29940, Notice of Approval (September 7, 2005).

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 36552.

TRD-200900095
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 9, 2009



Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 6, 2009, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.419, respectively.

Docket Title and Number: Application of XIT Telecommunication & Technology, Ltd. for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 36563.

The Application: XIT Telecommunication & Technology, Ltd. is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.417, the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. XIT Telecommunication & Technology, Ltd. seeks ETC/ETP designation in the Hereford wire center (HRFRTXHF) in the service area of non-rural incumbent local exchange company, Southwestern Bell Telephone Company d/b/a AT&T Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by February 12, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 36563.

TRD-200900091
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 9, 2009



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas on January 5, 2009, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §39.158 (Vernon 2007 & Supplement 2008) (PURA).

Docket Style and Number: Application of Exelon Corporation, Exelon Xchange, and Exelon Generation Company, LLC Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 36555.

The Application: Exelon Corporation, Exelon Xchange (Exelon Companies) and Exelon Generation Company, LLC (Exelon Generation) (collectively, Applicants) filed an application for approval of affiliation and consolidation with NRG Energy, Inc. (NRG). Applicants seek approval of the acquisition of voting securities of NRG and the subsequent restructuring and consolidation of the assets of Exelon Generation and NRG by the Exelon Companies. The affiliated or consolidated entity will own the generating assets currently owned by Exelon Generation and NRG. Exelon Xchange will be the surviving company and corporate parent of NRG and its subsidiaries.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36555.

TRD-200900090

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 9, 2009

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**Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.215**

Notice is given to the public of the filing on January 7, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The applicant will file the LRIC study on or after January 19, 2009.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Optional, Nonbasic Service of Business Category Search Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 36571.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 36571. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 36571.

TRD-200900094
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 9, 2009

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**Notice of Intent to Implement Minor Rate Changes Pursuant to
P.U.C. Substantive Rule §26.171**

Notice is given to the public of Ganado Telephone Company, Inc. (Ganado Telephone) application filed with the Public Utility Commission of Texas (commission) on December 31, 2008, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Ganado Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171; Tariff Control Number 36549.

The Application: Ganado Telephone Company, Inc. (Ganado Telephone) filed an application with the commission, pursuant to the P.U.C. Substantive Rule §26.171, to implement minor rate changes to its monthly Residential, Business rates and certain non-recurring service charges. The proposed effective date for the proposed rate changes is May 1, 2009. The estimated annual revenue increase recognized by Ganado Telephone is \$47,314 or less than 5% of Ganado Telephone's gross annual intrastate revenues. Ganado Telephone has 2,585 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by March 13, 2009, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by March 13, 2009. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 36549.

TRD-200900163
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2009

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**Notice of Petition for Approval of Re-Election of Unaffiliated
Directors**

Notice is hereby given to the public of the January 7, 2009, filing with the Public Utility Commission of Texas (commission) of the petition of the Electric Reliability Council of Texas (ERCOT) for approval of re-election of unaffiliated directors.

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Re-Election of Unaffiliated Directors, Docket Number 36566.

The Application: ERCOT seeks approval of re-election of unaffiliated directors of the ERCOT Board. The commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated §39.151 (Vernon 2007 and Supplement 2008). ERCOT's corporate members approved the re-elections of Michehl Gent and Jan Newton as unaffiliated directors. Mr. Gent and Ms. Newton were re-nominated on November 17, 2008, by the nominating committee and re-elected by the membership at the Annual Meeting on December 9, 2008. Mr. Gent's term expires in February 2009 and Ms. Newton's term expires in August 2009. The re-elected unaffiliated directors will serve the remainder of their current terms and will then continue serving pending commission consideration for approval.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or 1-800-735-2989. All correspondence should refer to Docket Number 36566.

TRD-200900093
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 9, 2009

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Office of Rural Community Affairs

**Request for Proposals: Rural Performance and Quality
Improvement Program**

The Office of Rural Community Affairs (ORCA) seeks to procure the services of a qualified independent organization to coordinate, manage and expand the existing statewide rural performance and quality improvement Network (PI/QI) for Texas small rural hospitals; focusing on quality improvement, measurement and increasing the number of hospitals reporting to the Centers for Medicare and Medicaid Services

(CMS) Hospital Compare public reporting database for hospital quality measures.

DEADLINE: Proposals must be received by ORCA by close of business day on **February 9, 2009**. Proposals submitted electronically or by facsimile transmission will not be accepted and will not be eligible for funding. Projected Start Date of Project is February 15, 2009.

Program Goals: The purpose of this program is to continue and expand the current statewide, rural performance and quality improvement network which is based on the balanced scorecard (BSC) framework and to assist rural hospitals to deliver high-quality care, increase patient safety, reduce medical errors, improve hospital performance and assist CAHs with the CART reporting process.

Eligibility, Qualification, and Program Specifications: Organizations with demonstrable experience and history in working with Texas rural hospitals with balanced scorecards, performance measurement, quality of care and patient safety are eligible to respond to this Request for Proposals (RFP). ORCA invites qualified Applicants to submit proposals for the management of a cost-effective, rural performance and quality improvement program. Responses showing ways to partner with the Texas Medical Foundation Health Quality Institute and experience working with the CMS Abstraction and Reporting Tool (CART) are strongly preferred. Selected Applicant will work with ORCA staff as necessary to ensure achievement of program goals.

Availability of Funds: This program is supported by funds from the Medicare Rural Hospital Flexibility (Flex) Program, Grant No. H54RH00055, and the Small Rural Hospital Improvement Program (SHIP), Grant No. H3HRH00002, awarded by the U.S. Department of Health and Human Services, Health Resources and Services Administration's (HRSA) Office of Rural Health Policy (ORHP). ORCA may commit up to \$200,000 for this program for FY 2009.

Project Period: The project period will be approximately 11 months and will begin from the date of the award contract. The project period may be extended, by mutual agreement, for one (1) year subject to the availability of funding.

Screening, Evaluation and Selection of Proposals: Proposals will be screened for eligibility and completeness. Incomplete responses and those that do not meet the guidelines and requirements in this RFP will not be evaluated; remaining responses will be evaluated for funding considerations based on the evaluation criteria in the RFP. Selected Applicant will receive the Notice of Grant Award (NGA) and the Award Contract from ORCA. The announcement of selection is not legally binding until an award contract is fully executed. Proposals submitted in response to this RFP will remain with ORCA and will not be returned. ORCA neither accepts any obligation by the retention of these proposals, nor commits to awarding any contract as a result of this RFP.

Contact Person: To obtain a copy of the application and guidance, please contact:

Office of Rural Community Affairs

1700 North Congress, Suite 220

Austin, Texas 78701

Attn: Cindy Miller

Email: cmiller@orca.state.tx.us

Telephone: (512) 936-6701 or 800-544-2042

TRD-200900066

Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Filed: January 7, 2009

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of New Braunfels, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the New Braunfels Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of New Braunfels. TxDOT CSJ No. 0915NBRNF. Scope: Phase I: Overlay and mark a portion of the northeast parking apron, Taxiways A, B, C, D, E, F, terminal apron and Runway 13-31; overlay/relocate jog in Taxiway A to Taxiway A; improve drainage; regrade ditches; replace inlet grates. Phase II: Replace MIRLS on Runway 13-31; install MITLs Taxiway A; replace PAPI-4 on Runway 13; install signage; and relocate/replace lighting vault at the New Braunfels Municipal Airport.

The DBE/HUB goal for the current project is 12%. TxDOT Project Manager is Harry Lorton, P.E.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Construct Taxiway G from mid field Runway 17-35 to main terminal
2. Construct new Taxiway G from Apron to Runway 17/Taxiway E intersection
3. Overlay/reconstruct additional portions of Northeast Parking Apron
4. Reconstruct and Mark Runway 17-35
5. Rehabilitate and Mark Hangar Apron and Taxiway
6. Install abbreviated ALS
7. Install REIL Runway 31
8. Install PAPI-4 Runway 17-35

Please note:

The City of New Braunfels is allowing interested consultants to visit the airport only on the two dates listed below:

February 3, 2009 from 1:30 - 5:00 and February 4, 2009 from 8:00 - 12:00.

Interested persons may come any time during these hours. Airport staff will be on site to address questions as need arises. Please do not call the city to set appointments.

The City of New Braunfels reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at

www.txdot.gov/avn/avninfo/notice/consult/index.htm

by selecting "New Braunfels Municipal Airport" The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/business/projects/aviation.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format.

The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than February 17, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each.

The criteria for evaluation engineering proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations.

The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-200900111

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 12, 2009



Aviation Division - Request for Proposal for Professional Aviation Services

The City of Paris, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services described below.

Airport Sponsor: City of Paris. TxDOT CSJ No.: 09MPPARIS. Prepare airport planning studies which include, but are not limited to, Airport Master Planning (information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan), noise analyses, environmental analyses, land use planning, pavement conditions surveys, drainage studies, and airspace analyses.

There is no DBE goal. TxDOT Project Manager is Sandra Braden.

Interested firms shall utilize the latest version of Form AVN-551 titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at

<http://www.txdot.gov/business/projects/aviation.htm>.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than February 17, 2009, at 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Delia Lopez Molina.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of consultants for airport planning projects can be found at

<http://www.txdot.gov/services/aviation/consultant.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Delia Lopez Molina, Grant Manager. For technical questions, please contact Sandra Braden, Project Manager.

TRD-200900182
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 14, 2009

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The Texas A&M University System

Invitation for Consultants to Provide Offers of Consulting Services

In accordance with Texas Government Code, Chapter 2254, Texas A&M University-Kingsville (the "University") is seeking responses from consultants through a Request for Proposals (RFP) number B900019.

The University is looking for a consultant firm with professional and experienced staff to evaluate the University Compensation System and to make recommendations for a comprehensive compensation program based on a market study as per the Scope of Work described in the RFP.

The study requires in-depth expertise in job analysis, access to compensation information for a broad scope of employees and extensive experience in policy development for compensation programs as well as extensive experience in job classification administration.

The consulting firm will assist in the development and implementation of a job evaluation system, evaluate current positions and assist in the development of relevant pay policies.

The firm will also review and recommend appropriate salary ranges, classification plan and FLSA compliance.

The University President has made a finding that the Consulting Services are necessary.

While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experi-

ence with the Consulting Services and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

The award for services will be made by the process indicated in Request for Proposals.

The University will: (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and (2) if other considerations are equal, give preference to a consultant firm whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The individual to be contacted with an offer to provide such consulting services or to obtain a copy of the Request for Proposals B900019 for the consulting services identified in this invitation is:

Ralph W. Stephens

MSC 212

700 University Boulevard

Kingsville, Texas 78363

Phone: (361) 593-3814

Email: procurement@tamuk.edu

The proposal submission deadline will be February 23, 2009.

TRD-200900067

Don Barwick

HUB and Procurement Manager

The Texas A&M University System

Filed: January 8, 2009
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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).